

## U.S. COMMISSION ON CIVIL RIGHTS

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## MEETING

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FRIDAY, APRIL 17, 2009

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The Commission convened in Room 540, 624 Ninth Street, N.W., Washington, D.C. at 9:30 a.m., Gerald A. Reynolds, Chairman, presiding.

PRESENT:

GERALD A. REYNOLDS, Chairman (via telephone)  
ABIGAIL THERNSTROM, Vice Chair  
TODD F. GAZIANO, Commissioner  
GAIL L. HERIOT, Commissioner  
PETER N. KIRSANOW, Commissioner (via telephone)  
ARLAN D. MELENDEZ, Commissioner  
ASHLEY L. TAYLOR, JR., Commissioner  
MICHAEL YAKI, Commissioner (via telephone)

MARTIN DANNENFELSER, Staff Director

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STAFF PRESENT:

DAVID BLACKWOOD, General Counsel, OGC  
MARGARET BUTLER  
CHRISTOPHER BYRNES, Director, RPCU  
DEMITRIA DEAS  
PAMELA A. DUNSTON, Chief, ASCD  
LATRICE FOSHEE  
MAHA JWEIED  
ROBERT LERNER, Asst. Deputy Staff Director  
SOCK-FOON MacDOUGALL  
TINALOUISE MARTIN, Director, OM  
EMMA MONROIG, Solicitor  
EILEEN RUDERT  
KIMBERLY TOLHURST  
VANESSA WILLIAMSON  
AUDREY WRIGHT  
MICHELLE YORKMAN

COMMISSIONER ASSISTANTS PRESENT:

TIM FAY  
DOMINIQUE LUDVIGSON  
KIMBERLY SCHULD  
RICHARD SCHMECHEL

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P R O C E E D I N G S

(9:36 a.m.)

CHAIRMAN REYNOLDS: The meeting will come to order.

This is a meeting of the U.S. Commission on Civil Rights. It is 9:36 Eastern Standard Time on April 17th, 2009. The meeting is being held at 624 Ninth Street, N.W., Room 540, Washington, D.C.

Is Commissioner Kirsanow on the phone?

COMMISSIONER KIRSANOW: Here.

CHAIRMAN REYNOLDS: Okay. Very good.

Commissioner Yaki?

COMMISSIONER YAKI: Here.

CHAIRMAN REYNOLDS: Excellent. Commissioners Kirsanow, Yaki and Reynolds are participating by phone. All other Commissioners are present at Commission headquarters.

The first item on the agenda is the approval of the agenda.

**I. APPROVAL OF AGENDA**

CHAIRMAN REYNOLDS: I move that we approve the agenda. Is there a second?

COMMISSIONER MELENDEZ: Second. Commissioner Melendez.

CHAIRMAN REYNOLDS: Discussion?

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1 (No response.)

2 COMMISSIONER MELENDEZ: Second.

3 CHAIRMAN REYNOLDS: Any discussion?

4 (No response.)

5 CHAIRMAN REYNOLDS: Okay. Since I'm  
6 participating by phone, I'll call out each  
7 Commissioner by name. Commissioner Melendez, how do  
8 you vote?

9 COMMISSIONER MELENDEZ: Yes.

10 CHAIRMAN REYNOLDS: Commissioner -- I'm  
11 sorry. Was that yes?

12 COMMISSIONER MELENDEZ: Yes.

13 CHAIRMAN REYNOLDS: Commissioner Kirsanow?

14 COMMISSIONER KIRSANOW: Yes.

15 CHAIRMAN REYNOLDS: Commissioner  
16 Thernstrom.

17 VICE CHAIR THERNSTROM: Yes.

18 CHAIRMAN REYNOLDS: Commissioner Taylor.

19 COMMISSIONER TAYLOR: Yes.

20 CHAIRMAN REYNOLDS: Commissioner Gaziano.

21 COMMISSIONER GAZIANO: Yes.

22 CHAIRMAN REYNOLDS: Commissioner Heriot.

23 COMMISSIONER HERIOT: Yes.

24 CHAIRMAN REYNOLDS: Commissioner Yaki.

25 COMMISSIONER YAKI: Yes.

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1 CHAIRMAN REYNOLDS: Okay. The motion  
2 passes unanimously.

3 Okay. The second item on the agenda is  
4 the approval of the minutes for the meetings held on  
5 February 20th and March 30th of 2009.

6 **II. APPROVAL OF MINUTES OF FEBRUARY 20, 2009**

7 **AND MARCH 30, 2009 MEETINGS**

8 CHAIRMAN REYNOLDS: We'll vote on each set  
9 of the minutes separately. I move that we approve the  
10 minutes for the February 20th, 2009 meeting. Is there  
11 a second?

12 COMMISSIONER TAYLOR: Second.

13 COMMISSIONER KIRSANOW: Kirsanow. Second.

14 COMMISSIONER GAZIANO: I have a minor  
15 amendment. I have a few style points I may raise  
16 later with staff, including whether we need to mention  
17 every time there's a vote that one Commissioner was  
18 not present when we state that up front, but my only  
19 substantive request is in the last paragraph, the last  
20 paragraph before Program Planning, the last paragraph  
21 in Management and Operations. It says, "Commissioner  
22 Gaziano stated that he was only voting against the  
23 proposed budget." I would like to clarify that  
24 sentence: was only voting against the proposed budget  
25 because he -- and this would be the change language --

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1 "wanted to request a higher amount from Congress than  
2 OMB had approved."

3 CHAIRMAN REYNOLDS: I assume that no one  
4 has any heartburn with that clarifying point.

5 (No response.)

6 CHAIRMAN REYNOLDS: Okay. With that  
7 revision to the February 20th set of minutes,  
8 Commissioner Melendez, how do you vote?

9 COMMISSIONER MELENDEZ: Yes.

10 CHAIRMAN REYNOLDS: Commissioner Kirsanow.

11 COMMISSIONER KIRSANOW: Yes.

12 CHAIRMAN REYNOLDS: Commissioner  
13 Thernstrom.

14 COMMISSIONER THERNSTROM: Yes.

15 CHAIRMAN REYNOLDS: Commissioner Taylor.

16 COMMISSIONER TAYLOR: Yes.

17 CHAIRMAN REYNOLDS: Commissioner Gaziano.

18 COMMISSIONER GAZIANO: Yes.

19 CHAIRMAN REYNOLDS: Commissioner Heriot.

20 COMMISSIONER HERIOT: Yes.

21 CHAIRMAN REYNOLDS: Commissioner Yaki.

22 COMMISSIONER YAKI: Yes.

23 CHAIRMAN REYNOLDS: Okay. The motion  
24 passes unanimously.

25 Next up is the -- oh, I move that we

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1 approve the March 30th, 2009 minutes. Is there a  
2 second?

3 COMMISSIONER TAYLOR: Second.

4 CHAIRMAN REYNOLDS: Discussion?

5 COMMISSIONER MELENDEZ: Yes. Commissioner  
6 Melendez.

7 On page 2 of the Staff Director's report,  
8 it says that Commissioner Melendez introduced a motion  
9 to lift the moratorium on special assistants so there  
10 would be hiring by all Commissioners who indicated  
11 they would be hiring assistants by 2010. That was not  
12 me. I believe it was the Chairman.

13 CHAIRMAN REYNOLDS: Okay. Let's make the  
14 revision.

15 Okay. With that revision, Commissioner  
16 Melendez, how do you vote?

17 COMMISSIONER MELENDEZ: Yes.

18 CHAIRMAN REYNOLDS: Commissioner Kirsanow?

19 COMMISSIONER KIRSANOW: Yes.

20 CHAIRMAN REYNOLDS: Commissioner  
21 Thernstrom.

22 VICE CHAIR THERNSTROM: Yes.

23 CHAIRMAN REYNOLDS: Commissioner Taylor.

24 COMMISSIONER TAYLOR: Yes.

25 CHAIRMAN REYNOLDS: Commissioner Gaziano.

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1 COMMISSIONER GAZIANO: Yes.

2 CHAIRMAN REYNOLDS: Commissioner Heriot.

3 COMMISSIONER HERIOT: Yes.

4 CHAIRMAN REYNOLDS: Commissioner Yaki.

5 COMMISSIONER YAKI: Yes.

6 CHAIRMAN REYNOLDS: The motion passes  
7 unanimously.

8 COMMISSIONER GAZIANO: For future minutes,  
9 there's a phrase in both of them that the following  
10 staff participated in the meeting. Some staff  
11 participated and some were present, and I think that  
12 just the phrase something like, "The following staff  
13 were present or participated." For example, in the  
14 minutes we just approved it said the following staff  
15 participated. I don't even know whether they were on  
16 the line or not. I think that wasn't significant  
17 enough to change the minutes, but if we could try to  
18 have it reflect something like that in the future, I'd  
19 appreciate it.

20 **III. ANNOUNCEMENTS**

21 CHAIRMAN REYNOLDS: Okay. All right.  
22 April 4th Marks the 41st anniversary of the death of  
23 Dr. Martin Luther King, Jr., who was shot and killed  
24 as he stood on a balcony of the Loraine Motel in  
25 Memphis, Tennessee, where he had gone to support black

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1 sanitary Public Works employees. He was assassinated  
2 only a day after his famous "I have been to the  
3 mountaintop" sermon in which he revealed that he was  
4 not afraid to die.

5 Dr. King was the founder and president of  
6 the Southern Christian Leadership Conference and a  
7 recipient of a Nobel Peace Prize. The nation  
8 celebrates his birthday as a national holiday every  
9 third Monday in January. This month we pause to  
10 reflect on the life and contributions of Dr. Martin  
11 Luther King, Jr. and his legacy as a civil rights  
12 leader.

13 In addition, this month also marks the  
14 70th anniversary of the legendary Marian Anderson's  
15 historic performance on the steps of the Lincoln  
16 Memorial on Easter Sunday 1939. She sang there for  
17 some 75,000 people and a radio audience of millions  
18 after the Daughters of the American Revolution refused  
19 to allow her to sing to an integrated audience at  
20 Constitution Hall because of her race. Their refusal  
21 led to First Lady Eleanor Roosevelt to resign her DAR  
22 membership and prompted President Roosevelt to give  
23 permission for the outdoor concert.

24 With her performance that day Anderson  
25 elegantly and powerfully challenged the racial

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1 prejudices of the day. She became an important symbol  
2 of grace during the civil rights movement and notably  
3 singing at the March on Washington for Jobs and  
4 Freedom in 1963.

5 Okay, and finally, we also commemorate the  
6 enactment of the Civil Rights Act of 1866 this month,  
7 which was passed on April 9th, 1866, and a  
8 congressional override of President Andrew Johnson's  
9 veto. The act declared all persons citizens who were  
10 born in the United States and not subject to any  
11 foreign power. Among other things, it reinforced the  
12 rights of freed men during reconstruction against  
13 black codes enacted by former slave states following  
14 the passage of the 13th Amendment in an attempt to  
15 circumvent the 13th Amendment.

16 The Civil Rights Act of 1866, the first of  
17 its kind, protected the rights of all Americans,  
18 including former slaves, to make contract, to sue, to  
19 bear witness in court, and to own private property.

20 Next up, the Staff Director's report. Mr.  
21 Staff Director, please present your report.

#### 22 **IV. STAFF DIRECTOR'S REPORT**

23 STAFF DIRECTOR DANNENFELSER: Thank you,  
24 Mr. Chairman.

25 There are some specific items on the

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1 agenda for updates on the status of the 2009 statutory  
2 report and the status of the briefing report. So I  
3 will discuss those items at those points in the  
4 agenda. An update on briefing reports was included in  
5 the Staff Director's report in the meeting binder that  
6 was sent to Commissioners on April 9th.

7           During the March reporting period, OCRE  
8 received 119 written complaints, no congressional  
9 complaint, one walk-in complaint, 23 E-mail  
10 complaints, and 130 telephone complaints. Fifty-nine  
11 were repeat calls. In total, staff received and  
12 processed 268 complaints during the March reporting  
13 period.

14           The library staff received 75 telephone  
15 inquiries. They completed 28 simple reference  
16 requests and performed 12 research projects of various  
17 sizes. An additional 66 research requests were  
18 completed utilizing automated search services.

19           And there were 136 written requests and  
20 139 E-mail requests for publications during the March  
21 period as well. Two hundred and seventy-nine  
22 publications were mailed and 40 different publications  
23 were requested. "Getting Uncle Sam to Enforce your  
24 Civil Rights," "Compilation of Civil Rights Laws," and  
25 the catalogue of publications were our most requested

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1 publications during this period. Currently there are  
2 45 requests for publications in process.

3 Staff is currently finalizing the position  
4 description for the Budget and Finance Chief in  
5 anticipation that that position will be advertised  
6 shortly, and staff is reviewing proposals from vendors  
7 for external accounting services in FY 2010. At the  
8 same time, the current accounting service memorandum  
9 of understanding is being reviewed for possible  
10 reduction of costs and services.

11 Staff is working on updating the  
12 Commission's budget to include the additional 340,000  
13 approved for FY '09. The hiring of three additional  
14 special assistants and possibly a fourth in fiscal  
15 year 2009 will be accommodated with these additional  
16 funds. Upgrades and improvements to this conference  
17 room, as well as other Commission space are also being  
18 explored.

19 Regional Directors have been asked to  
20 describe their SAC recruitment and meeting plans for  
21 the remainder of the fiscal year. We're also  
22 considering plans for a public service announcement  
23 that can be prepared with these additional funds.

24 Instructions and training continues to be  
25 provided to employees for the conversion to the E2

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1 travel system. Another training session is scheduled  
2 to take place on April 28th, 2009. I've notified  
3 special assistants and other staff of the availability  
4 of that training if they're interested in signing up  
5 for it.

6 We continue to work with the regional  
7 offices on re-chartering State Advisory Committees and  
8 their conducting of meetings in the states and  
9 reviewing reports from the Advisory Committees.

10 And that's my report at this time.

11 CHAIRMAN REYNOLDS: Okay.

12 COMMISSIONER GAZIANO: Mr. Staff Director.

13 CHAIRMAN REYNOLDS: Are there any  
14 questions for the Staff Director?

15 COMMISSIONER GAZIANO: I have one or two.

16 I didn't see the Internet numbers, and I'm going to  
17 remain interested in those. Would you mind sending  
18 those to --

19 STAFF DIRECTOR DANNENFELSER: I will and  
20 they were not --

21 COMMISSIONER GAZIANO: -- the  
22 Commissioners and try to include them in --

23 STAFF DIRECTOR DANNENFELSER: They were  
24 not available at the time of the report, but I will  
25 try to get those to you and send them all to all

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1 Commissioners.

2 COMMISSIONER GAZIANO: And try to make  
3 sure they're in all --

4 STAFF DIRECTOR DANNENFELSER: Yes.

5 COMMISSIONER GAZIANO: -- of our future --

6 STAFF DIRECTOR DANNENFELSER: That's our  
7 goal each month.

8 COMMISSIONER GAZIANO: Okay. If they're  
9 like they've been in the past, they sort of dwarf the  
10 number of reports that the citizens are receiving from  
11 us, and I want the kind of records that most people  
12 read to reflect that.

13 CHAIRMAN REYNOLDS: Any other questions or  
14 comments?

15 COMMISSIONER MELENDEZ: Yes. Commissioner  
16 Melendez here.

17 Back in December we had talked about  
18 hiring a deputy staff director is that still in the  
19 works or have we decided to use that money for the  
20 special assistants? I'm not sure exactly where we are  
21 financially. I know that there are some things that  
22 are proposed and we don't hear about them, and then  
23 for assistants it just seems like maybe we're trying  
24 to use that money in place of the staff director.  
25 That's why I keep asking for some line items as far as

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1 the money that's being moved around.

2 CHAIRMAN REYNOLDS: Commissioner Melendez.

3 COMMISSIONER MELENDEZ: Yes.

4 CHAIRMAN REYNOLDS: There were some  
5 problems with the hiring process. The issue has been  
6 held in abeyance until we decide when or if we go  
7 forward with this, and we'll put this matter on the  
8 agenda for the next business meeting.

9 COMMISSIONER MELENDEZ: Okay. The other  
10 question I had, I know I had asked about the -- what  
11 was it? -- the conference that we were supposedly  
12 supposed to have some time this year. As far as an  
13 update, I think I had asked for an update so that the  
14 Commissioners could receive some type of updates as  
15 far as the planning and where we are because I know  
16 that we're going to be getting close to the end of the  
17 year. It is already April and we haven't heard too  
18 much about a specific date or anything that's leading  
19 up as far as planning or cost or anything like that.  
20 So I'd like to see that the Staff Director includes  
21 that in the report each time so that we kind of know  
22 where we are with that unless we're going to postpone  
23 that to the following year or something along those  
24 lines.

25 STAFF DIRECTOR DANNENFELSER: We are still

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1 planning to go forward. I have been having some  
2 internal discussions with staff about that, and we do  
3 plan to get a meeting called together very soon to  
4 more formally move that process forward.

5 VICE CHAIR THERNSTROM: A meeting within  
6 the staff or --

7 STAFF DIRECTOR DANNENFELSER: Yes, within  
8 the staff. We want to get the special assistants very  
9 engaged, among others, in that process, and so we will  
10 have a meeting with staff, and we'll also be, like I  
11 said, bringing the special assistants into that in a  
12 very active role.

13 VICE CHAIR THERNSTROM: And I can't  
14 remember when we're talking about.

15 STAFF DIRECTOR DANNENFELSER: Well, it  
16 would be before the end of the fiscal year. So we  
17 haven't set a date at this point. That will be part  
18 of the planning process.

19 CHAIRMAN REYNOLDS: Mr. Staff Director, I  
20 have a question for you. Could you describe the E2  
21 travel system? I know that we have some transitional  
22 issues that we need to work out, but could you  
23 describe the benefits of a new system and also briefly  
24 tell us what's going to be done to correct some of the  
25 problems that we had in planning for this business

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1 meeting.

2 STAFF DIRECTOR DANNENFELSER: Well, I'm  
3 asking the Director of the Office of Management to  
4 come up to the front. I'll start on this and I think  
5 I'll ask her to elaborate.

6 But this is something that GSA is phasing  
7 out of the current service provider that we have, and  
8 one of the major reasons is to get more of these  
9 arrangements done electronically. There have been  
10 problems in the past cited by the auditors when we had  
11 too many paper records, and part of this process is to  
12 really get more of it done electronically so we have a  
13 better system for doing that.

14 We have had concerns about service and  
15 particularly being able to deal with a live person  
16 when there's a concern. So that's something that we  
17 are trying to address. But I think I will ask the  
18 Director of the Office of Management to elaborate a  
19 little bit further at this point.

20 COMMISSIONER YAKI: This is Commissioner  
21 Yaki.

22 While the Director of Management comes up  
23 to speak, let me just throw something out. We have a  
24 two-step or three-step or sometimes unfortunately five  
25 to seven-step process for making air reservations.

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1 The first step is making the reservation. The second  
2 step is getting the authorization to book that  
3 reservation, and it seems to me that for me one of the  
4 frustrations I had about coming out here, which  
5 unfortunately I could not come in the end because of a  
6 family problem, is that whoever the reservationist is,  
7 I don't know if we have a regular one like we did at  
8 the other one or if it's all going to be electronic,  
9 and if it's going to be electronic, how is that made?

10 And then secondly and more importantly is  
11 how then is that reservation turned into a booked  
12 ticket, which was done previously by getting the  
13 travel authorization. The travel authorization was  
14 then sent to the travel agent, and then the ticket was  
15 booked.

16 I don't know how that process still  
17 remains or not. All I can say is that it has been  
18 extremely frustrating for me, especially flying from  
19 the West Coast, in wanting to try and get reservations  
20 made earlier. The flights I take, which are nonstop,  
21 are extremely crowded and often get booked up very  
22 fast, and you know, having to wait until the day  
23 before to actually buy a booked ticket, you know,  
24 affects your seating. It affects everything, and I  
25 just don't think that's the kind of thing I want to

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1 see if that's what we're going to have to be dealing  
2 with this new travel agency.

3           And all I can say is that the personnel  
4 whom I did deal with so far are the travel agency, and  
5 they've been close to incompetent. They don't seem to  
6 know what they're doing. They argue with you on E-  
7 mail, which I find very odd for someone who's supposed  
8 to be doing service for us, and I just want to know  
9 what we're going to be doing to deal with, you know,  
10 one, the problems we're having with reservations and,  
11 two, how we make sure that we get the transition from  
12 reservation to ticketing done is a smoother and much  
13 faster way than what we've experienced so far.

14           STAFF DIRECTOR DANNENFELSER: Well, let me  
15 just respond briefly, and then I'll turn it over to  
16 the Director of Management.

17           I did speak to someone last weekend, you  
18 know, when you and I were exchanging E-mails about  
19 this situation, and the person I spoke to said that  
20 the tickets are normally issued 48 hours before. In  
21 this case the reservation had been made, and I know  
22 there had been some changes, that you had made a  
23 change on the seating, for instance. So I don't think  
24 the fact that the ticket had not been issued affected  
25 the ability not to change --

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1                   COMMISSIONER YAKI:  -- the airplane in the  
2 middle aisle.  I mean, first of all, if we're dealing  
3 with 48-hour ticketing for people from the West Coast,  
4 I think that's unacceptable.  If that's what their  
5 standard is going to be that they're going to impose  
6 upon us, I say we get rid of them or they change, but  
7 48-hour ticketing for folks from the West Coast, at  
8 least for me, is completely unacceptable.

9                   STAFF DIRECTOR DANNENFELSER:  Again, these  
10 are --

11                   CHAIRMAN REYNOLDS:  I don't know.  Can  
12 someone unpack this ticketing process here?  When you  
13 say that we have 48-hour ticketing, what does that  
14 mean?

15                   STAFF DIRECTOR DANNENFELSER:  I think  
16 that's actually the issuing of the ticketing.  My  
17 understanding is that this doesn't have any effect on  
18 the reservation process itself, but most people --

19                   COMMISSIONER YAKI:  Oh, it has tremendous  
20 impacts on the reservation process.

21                   COMMISSIONER HERIOT:  Could I comment  
22 here?

23                   COMMISSIONER YAKI:  Anyone flying from the  
24 West Coast, if you want to try to avail yourself of an  
25 upgrade or change your seats -- and I'll be very

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1 blunt. At the amount of miles I fly, I can check in  
2 earlier and change my seat earlier than 48 hours. If  
3 they do not actually issue the tickets until two days  
4 before, I am simply stuck there in limbo, and I will  
5 do anything, such as try and get a better seat or what  
6 have you because these morons apparently don't know  
7 how to book me, even though I clearly gave them all  
8 the information they need to book my seating.

9 The reason I change it is because they put  
10 me in like Row 36, Seat E in the middle, when there  
11 are vacant seats way farther up in different sections  
12 of the airplane.

13 So I've never had these problems ever from  
14 the very beginning with Omega.

15 CHAIRMAN REYNOLDS: Well, Mr. Staff  
16 Director, is there any reason why we couldn't have the  
17 ticketing completed, well, a week ahead of schedule?  
18 We know when we're going to come in for our meetings.

19 Is there any reason why we couldn't get this done in  
20 advance?

21 STAFF DIRECTOR DANNENFELSER: Well, I'll  
22 turn it over to the Director, to say I still think  
23 there's a distinction here that the seating change was  
24 made during the reservation period. While the  
25 reservation had been made --

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1 COMMISSIONER YAKI: No, no.

2 STAFF DIRECTOR DANNENFELSER: -- there was  
3 a seating change even though the ticket had not  
4 technically been issued.

5 COMMISSIONER YAKI: But let me unpack this  
6 a little bit so that you understand, Mr. Staff  
7 Director.

8 STAFF DIRECTOR DANNENFELSER: I didn't  
9 hear the first part of the question.

10 COMMISSIONER HERIOT: Mr. Chairman, can I  
11 comment here? Because I think I've got some  
12 additional information here.

13 You know, first of all, I want to echo  
14 what Commissioner Yaki is saying. For a West Coast  
15 person, it makes a big difference. It's the  
16 difference between sitting with two squalling children  
17 in the back and getting a better seat. You cannot  
18 change your seat unless you have everything already in  
19 place. It has happened to me several times. So  
20 there's no doubt that Commissioner Yaki is correct on  
21 this.

22 But it's much worse than that. The new  
23 system, the first ticket I got, which was last time,  
24 right when I was about to leave to the airport, I  
25 found that, in fact, they had booked me for the day

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1 before. This is a serious, serious error, and I  
2 thought at first that it was such a serious error that  
3 since I was the person who had chosen the day, I must  
4 have been that I had forgotten that I had wanted to  
5 come the day before.

6 But, no, what I had asked for was not what  
7 I had gotten. The ticket was for the day before, and  
8 it was just lucky that United happened to have a seat  
9 because they usually don't on their nonstop flights.

10 So I have resorted to booking my own  
11 flight, and I know I don't see that there's any  
12 alternative to that. The current system is just  
13 utterly unworkable. I'm not going to get another  
14 ticket that's booked for the wrong day.

15 VICE CHAIR THERNSTROM: And yet as I  
16 remember, the whole system didn't really allow you to  
17 book your own flights or it went into meltdown.

18 Commissioner Yaki, this is not a new  
19 problem. This is not a problem simply because you  
20 live on the West Coast. When I was coming regularly  
21 from Boston, I had meltdown every month about this  
22 ticketing process because you are perfectly right. It  
23 does make a difference when you are actually ticketed.

24 So I mean, yes, there's a reservation in  
25 your name, but that does not allow upgrades. That

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1 does not allow changing the seats. I mean, the whole  
2 process is ridiculous.

3 COMMISSIONER GAZIANO: Three of us.

4 CHAIRMAN REYNOLDS: Let's hear some more  
5 about the process. We were about to have someone  
6 provide us some additional information.

7 COMMISSIONER GAZIANO: Tina Martin, take  
8 it over, please.

9 MS. MARTIN: Okay. The process is still  
10 the same. You have to do your authorization first  
11 before you can even get a reservation, and I know  
12 we've been having problems with actually getting the  
13 authorizations in on time. I don't know if it's a  
14 user error or if it's not timely that it's coming from  
15 the Commissioners. I don't know where that part is,  
16 but we must have an authorization first, and it must  
17 be approved.

18 CHAIRMAN REYNOLDS: Wait a minute. When  
19 you say an "authorization," what does that mean?

20 MS. MARTIN: The authorization is approved  
21 to allow you to even travel.

22 CHAIRMAN REYNOLDS: Who does the  
23 authorizing?

24 MS. MARTIN: The Staff Director approves  
25 all travel. Once the Staff Director approves the

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1 travel, then it must come to Budget to certify the  
2 funds. Once you have those two approvals, then the  
3 tickets are issued with this new system.

4 When we were with Omega, Omega issued  
5 tickets without authorization.

6 COMMISSIONER YAKI: I just want to say I  
7 regularly put in my request. I think the last trip  
8 may have been different. I'm not sure, but actually I  
9 don't think it was. I regularly put in my request at  
10 least two weeks, usually three, to get the ball  
11 rolling on the ticketing. And up until this change it  
12 worked very, very smoothly, but once this change  
13 occurred, you know, the reservationist person whom I  
14 had an E-mail with had a meltdown about it, and I  
15 didn't get the authorization until the weekend before  
16 this past weekend to get ticketed, and those guys  
17 apparently don't really work much on the weekends.  
18 Only through the intercession of the Staff Director  
19 did they even get around to getting that ticket done.

20 But you know, I just want to put on the  
21 record that unless it's a last minute change, I ask  
22 for -- I generally plan my travel well in advance.  
23 I'm sure Gerry does as well and everyone else on the  
24 Commission does. We build our schedules around this  
25 time that we're going to be here. We know when we're

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1 going to be here for the most part, and you know,  
2 still things get delayed.

3 CHAIRMAN REYNOLDS: Okay. Tina, please  
4 continue.

5 MS. MARTIN: Well, as I was saying, when  
6 we were with Omega, Omega was approving travel  
7 reservations before they received an authorization  
8 approval. So that would probably be the reason why  
9 you didn't have a problem, because they were violating  
10 the federal travel regulations by even issuing those  
11 tickets.

12 I can also say that I have rarely received  
13 a travel authorization two to three weeks in advance.

14 When I get travel authorizations to be certified, I'm  
15 getting them maybe three to four days before a person  
16 travels or, in your case this weekend --

17 COMMISSIONER YAKI: That is completely  
18 wrong.

19 MS. MARTIN: -- Mr. Yaki --

20 COMMISSIONER YAKI: I can show you every  
21 E-mail that I sent.

22 CHAIRMAN REYNOLDS: Well, no, no, no.  
23 Hold on, hold on.

24 MS. MARTIN: I'm not saying it's coming  
25 from you.

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1 CHAIRMAN REYNOLDS: She's telling you when  
2 it arrives in her shop. She's not suggesting --

3 COMMISSIONER YAKI: Oh, no, that's right.  
4 I'm sorry. I take that back.

5 CHAIRMAN REYNOLDS: Okay.

6 MS. MARTIN: And for instance, I was  
7 saying about this weekend travel I had just received  
8 your authorization on the Friday before you were  
9 traveling the next week. So I'm saying I don't know  
10 where the hold-up is, but I'm not getting travel  
11 authorizations to be approved two or three weeks in  
12 advance.

13 COMMISSIONER YAKI: Well, let me just shed  
14 some light on this, Mr. Chair, because I put my  
15 request in the beginning of the week before, and I  
16 kept on asking when am I going to get booked, when am  
17 I going to get my reservation done. My go time is I  
18 want my ticket a week before booked and done.

19 As it turned out, I did not get a  
20 reservation until the following Wednesday, which was  
21 wrong, and then did not get the supposed authorization  
22 until late Friday evening.

23 CHAIRMAN REYNOLDS: Well, Commissioner  
24 Yaki, I think that this can be fixed. Mr. Staff  
25 Director, can you describe the process in your shop?

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1 I mean, the suggestion is that the dates  
2 are selected. That information is conveyed, I assume,  
3 initially to your shop, and then from there it's  
4 supposed to go to Tina's shop. The discussion thus  
5 far suggests that this information is being  
6 bottlenecked in your shop.

7 STAFF DIRECTOR DANNENFELSER: Some of it  
8 is some of the Commissioners make their own  
9 reservations. Others request that they be made  
10 through my office, and then they are put in the  
11 system, and then once they are in the system and  
12 processed in the system, they'll come to me for  
13 approval, and once I approve them, they go immediately  
14 to Tina for approval.

15 CHAIRMAN REYNOLDS: Well, I mean, we can  
16 solve at least a piece of the problem by insuring that  
17 once the information lands in your shop, that it's not  
18 necessarily expedited, but just processed in an  
19 orderly and a timely fashion. That's one piece.

20 Commissioner Yaki also mentioned that the  
21 customer service rep. for E2 were unprofessional. We  
22 need to circle back to E2 and just remind them that we  
23 expect professionalism.

24 And, Commissioner Heriot, I guess your  
25 problem has been fixed since we now had the ability to

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1 book our own flights, but going forward we should be  
2 mindful of getting this process improved. In fact,  
3 since we already have dates selected for the rest of  
4 the year, I don't see any reason why we couldn't book  
5 flights for the rest of the year and put the burden on  
6 the Commissioners to cancel.

7 Now, there may be reasons why we shouldn't  
8 do that. Marty, Tina, is there a reason why we can't  
9 do that or at least shouldn't?

10 COMMISSIONER GAZIANO: That relates to a  
11 question I have, if you don't mind, Mr. Chairman. I  
12 have great sympathy for those of you who must travel.

13 I've heard these horrible stories. So I'm also  
14 reluctant to butt in, but I've also heard that the  
15 prices they get on these open-ended tickets are three  
16 times as high, and I have some interest in, of course,  
17 those who want to try to save the Commission's money.

18 So I do just want to understand whether Commissioners  
19 can book their own tickets and whether that might --

20 COMMISSIONER YAKI: Commissioner Gaziano,  
21 we fly at a government rate. There's a government  
22 rate set by the airlines. It is not something where  
23 you buy these \$2,500 open-ended, nonrefundable ticket.

24 We're not allowed to do that. We're only allowed to  
25 buy whatever qualifies as the government fare on the

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1 various airlines.

2 COMMISSIONER GAZIANO: Is the government  
3 fare though still higher? That's what I understand.  
4 It's still higher than the rate that you might be able  
5 to get.

6 COMMISSIONER YAKI: It's still higher if  
7 you don't want to fly on the four o'clock flight that  
8 gets in at midnight and leave on the 10:00 p.m. flight  
9 that gets in at 2:00 a.m.

10 COMMISSIONER HERIOT: No, actually I get  
11 the very same flight. I've booked it for about \$450  
12 through Orbitz. We would have paid, I think, 1,200  
13 via the government rate. The government rate is much,  
14 much higher than the Orbitz rate. The government rate  
15 is more flexible, but then again, it's rare for us to  
16 change our plans here, and even if I were to miss my  
17 plane, I'd only pay, I think, an extra \$100 which  
18 still wouldn't get anywhere near the government rate.

19 VICE CHAIR THERNSTROM: Mr. Staff  
20 Director, is there some way of figuring all of this  
21 out without extensive discussion?

22 COMMISSIONER YAKI: Gail, Commissioner  
23 Heriot --

24 CHAIRMAN REYNOLDS: One at a time.

25 VICE CHAIR THERNSTROM: Pardon me?

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1 CHAIRMAN REYNOLDS: One at a time.

2 VICE CHAIR THERNSTROM: Oh, I'm sorry. I  
3 thought I was the only one talking. I wondered  
4 whether it was possible to resolve this issue, which I  
5 take very seriously because I've had a lot of  
6 experience before I moved, resolve this issue outside  
7 of this meeting because it seems to me that the Staff  
8 Director, in consultation with whoever wants to talk  
9 to him about it, Commissioner Yaki, Commissioner  
10 whoever wants to talk to him about it. Can we resolve  
11 it outside of this?

12 CHAIRMAN REYNOLDS: I think that that's a  
13 good idea. Is that amenable to -- I mean, is that  
14 suggestion -- is everyone else comfortable with that  
15 suggestion?

16 COMMISSIONER YAKI: Yes, I am.

17 COMMISSIONER TAYLOR: Mr. Chair, if I may.

18 CHAIRMAN REYNOLDS: Go ahead.

19 COMMISSIONER TAYLOR: Just one question.  
20 Is our problem an internal problem? Is our problem  
21 with the vendor?

22 VICE CHAIR THERNSTROM: It's both.

23 COMMISSIONER TAYLOR: It's both? Okay.

24 CHAIRMAN REYNOLDS: Well, I would expect  
25 the Staff Director to analyze the problem, see where

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1 the bottlenecks are, identify the problems, and then  
2 come up with a game plan so that these issues are  
3 resolved. And we'll do that off line.

4 Any other comments or questions about the  
5 Staff Director's report?

6 COMMISSIONER GAZIANO: One just quick  
7 question. Was the letter sent regarding the EEOC  
8 report?

9 STAFF DIRECTOR DANNENFELSER: That has  
10 been sent, yes.

11 COMMISSIONER GAZIANO: Okay. And would  
12 you mind sending copies of that to us?

13 STAFF DIRECTOR DANNENFELSER: Yes, I will.

14 COMMISSIONER GAZIANO: Thank you.

15 CHAIRMAN REYNOLDS: Okay. Next up an  
16 update on the 2009 statutory report.

#### 17 V. PROGRAM PLANNING

#### 18 UPDATE ON STATUS OF 2009 STATUTORY REPORT

19 CHAIRMAN REYNOLDS: Mr. Staff Director.

20 STAFF DIRECTOR DANNENFELSER: Thank you,  
21 Mr. Chairman.

22 The staff has been continuing to work on  
23 that, and there is still some statistics that have  
24 been coming in very recently. The report is now in  
25 the neighborhood of 120 pages, and I'm going to ask

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1 David Blackwood to give us some more detail about  
2 that.

3 MR. BLACKWOOD: Thank you.

4 This is David Blackwood.

5 The Staff Director is correct. We're up  
6 to about actually more than 120 pages. We have  
7 substantially, not completely, but substantially  
8 completed the data research that we need, and that  
9 portion of the report is in good shape and basically  
10 in the proper order. We have spent a lot of time  
11 collecting data, and frankly, we will continue. Some  
12 of the sources we have dealt with have indicated that  
13 additional reports, especially from the Fed., will be  
14 forthcoming in the next month or two.

15 That said, I feel very confident about the  
16 shape of the report as far as the data collection.  
17 Where we still have substantial work to do is with  
18 regard to the narrative describing what the data  
19 means. Although we have done an analysis internally  
20 about what the data means and have had many  
21 discussions about that, we haven't actually created  
22 the narrative and put it in the report.

23 I will now shoot up a flare, which is I  
24 think that we may require -- I can't say yet -- but  
25 may require an additional week beyond the 27th to

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1 complete the report in order for you all to have a  
2 report that is in substantially the form where we  
3 believe it is complete. I can't say that until the  
4 middle of next week.

5 We will spend a lot of time this weekend  
6 drafting the narrative and filling in those spaces.  
7 That said, I do want to put you on notice that I may  
8 in the middle of next week say that I don't think I'll  
9 need any more, but I may request an additional week  
10 beyond the 27th to get the report out to you in a  
11 substantially completed form.

12 CHAIRMAN REYNOLDS: Well, David, if you  
13 provide us with a document that's substantially  
14 complete, I suspect that no one is going to have  
15 heartburn over providing you with an additional week.

16 That was an attempt at humor. So --

17 (Laughter.)

18 VICE CHAIR THERNSTROM: It failed.

19 CHAIRMAN REYNOLDS: I shouldn't quit my  
20 day job.

21 Questions? Are there any questions for  
22 David?

23 (No response.)

24 CHAIRMAN REYNOLDS: Okay. Next up is the  
25 findings of fact and recommendations for the briefing

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1 report on the Department of Justice's voting rights  
2 enforcement for the 2008 presidential election.

3 **V. PROGRAM PLANNING**

4 **APPROVAL OF FINDINGS AND RECOMMENDATIONS FOR THE**  
5 **BRIEFING REPORT ON DEPARTMENT OF JUSTICE**  
6 **VOTING RIGHTS ENFORCEMENT FOR THE 2008**  
7 **PRESIDENTIAL ELECTION**

8 CHAIRMAN REYNOLDS: Part A of the briefing  
9 report on the DOJ voting rights enforcement for 2008  
10 presidential election was approved on January 9th,  
11 2009. Part B, the findings and recommendations for  
12 its briefing report were included in the binders that  
13 were sent to Commissioners on April 9th.

14 On April 12th, Commissioners received an  
15 E-mail containing amended findings and recommendations  
16 proposed by Commissioner Heriot to expedite the  
17 approval process.

18 I move that we vote on Commissioner  
19 Heriot's revised findings and recommendations as our  
20 baseline rather than those distributed in the meeting  
21 binders. Is there a second?

22 COMMISSIONER KIRSANOW: Kirsanow. Second.

23 CHAIRMAN REYNOLDS: Discussion?

24 COMMISSIONER YAKI: Commissioner Yaki  
25 here.

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1           As a person who had requested the briefing  
2           on the DOJ's preparation for the 2008 election, I'm  
3           just going to reiterate for both the proposed findings  
4           and as for Commissioner Heriot's findings that (a) we  
5           don't need them because that wasn't really the purpose  
6           of what that briefing was about. It was to be  
7           informational. It was to be preparatory. It was for  
8           people to listen and learn as to what DOJ was planning  
9           to do. It was for policy makers to react accordingly,  
10          whether in Congress, whether in the nonprofit world,  
11          et cetera.

12                 Number two, given the abbreviated nature  
13                 of the briefing and the fact that if you really want  
14                 to see anything with regard to findings or  
15                 recommendations as to what this preparation would be,  
16                 it would be, I would think, much more defensible to do  
17                 so in the context of information adduced and produced  
18                 in the public record through a post election period to  
19                 see exactly how those preparations went and what those  
20                 results would be with a critical eye.

21                 I think it is very difficult, if not  
22                 impossible, to talk about extrapolating from what  
23                 people said they were going to do in 2008 to any  
24                 conclusions about their performance during the 2008  
25                 election. I mean, we can all sort of go to other

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1 sources or outside sources to try and do so, but that  
2 really was outside the record of the 2008 hearing, and  
3 I think that both the recommendations found prepared  
4 by staff and the recommendations that I know were  
5 worked on very hard by Commissioner Heriot,  
6 nonetheless I still think are founded for the most  
7 part in material extraneous to what was discussed at  
8 this particular hearing.

9 So I am not going to support any findings  
10 and recommendations to this report at all.

11 VICE CHAIR THERNSTROM: Mr. Chairman.

12 CHAIRMAN REYNOLDS: Yes, go ahead.

13 VICE CHAIR THERNSTROM: So, Commissioner  
14 Yaki, I'm a little confused here. We didn't hold a  
15 post election briefing in which the questions that you  
16 raise, the important questions you raise we were  
17 briefed on, were discussed, and it does seem to me  
18 that when we issue a briefing report that has no  
19 findings -- forget about the recommendations for the  
20 moment -- but has no findings even, that it means  
21 nobody is going to read the report.

22 I mean, the way people read reports is  
23 they look for, you know, what's the bottom line on  
24 what these people found, and it becomes, you know,  
25 something to go into a dead letter box without some

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1 effort at summarizing what we found at the briefing  
2 that we held.

3 So I mean, I would like also to know what  
4 the performance was, but that is a separate question.

5 COMMISSIONER GAZIANO: Mr. Chairman.

6 COMMISSIONER YAKI: This is Commissioner  
7 Yaki.

8 I would say that I might be persuaded as  
9 to the findings issue related to that. I think that  
10 it's difficult to talk about recommendations in the  
11 report for an election that's past without doing any  
12 examination of that past election with an eye toward  
13 what was being discussed at the previous hearing.

14 VICE CHAIR THERNSTROM: Well, I'm not in  
15 disagreement with -- I understand that point  
16 perfectly, but I am very reluctant to throw out the  
17 findings.

18 COMMISSIONER GAZIANO: Yes, these don't  
19 relate to -- they're not that specific. You know, I  
20 certainly agree with Commissioner Yaki that not every  
21 one of our briefings needs to result in a briefing  
22 report with findings and recommendations. They may be  
23 moot or it may not have been that kind of a briefing.

24 There's two reasons why I think we should  
25 go forward with approving findings and recommendations

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1 if we can, and I think a majority -- we probably know  
2 where this is. This is a recurring issue for us, and  
3 it was on what the Justice Department has been doing,  
4 how it has increased its supervision of election over  
5 the years, and this is also central to our  
6 jurisdiction.

7 So for both of those reasons, and third,  
8 these particular findings and recommendations don't  
9 require us to delve into what exactly happened in the  
10 last election. They were on general matters.

11 So for all of those reasons I think that  
12 these findings and recommendations are pretty  
13 important.

14 VICE CHAIR THERNSTROM: I mean, Mr.  
15 Chairman, I think if I understand correctly Mr. Yaki  
16 has problems with sentences like, "DOJ should take  
17 aggressive steps to insure all states comply with how  
18 this requirement. . . ." Well, that's "should take."

19 It is a little bit of a dated statement. We don't  
20 know if DOJ has begun to do so at this point and so  
21 forth.

22 I mean, I think, Commissioner Yaki, is  
23 that your point? That's in the recommendations  
24 section.

25 COMMISSIONER YAKI: Yes, sure. Yes,

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1 Commissioner Thernstrom, that's one of them.

2 COMMISSIONER GAZIANO: And there is  
3 evidence they haven't been doing it as late as the  
4 most recent New York special election, but I certainly  
5 think --

6 COMMISSIONER YAKI: And that is outside of  
7 what our briefing contemplated.

8 COMMISSIONER GAZIANO: All I'm saying  
9 is --

10 COMMISSIONER YAKI: And it's evidence  
11 that, you know, is seen through a filter. I may look  
12 at that differently.

13 COMMISSIONER GAZIANO: I understand. So  
14 we can propose amendments to each other to strike a  
15 sentence and I'll, you know, have a view and we'll  
16 each have a view as to whether that sentence should  
17 stay or not, but the general point about whether we  
18 should have findings and recommendations on an issue  
19 like this seems to me to, you know, not warrant a lot  
20 of discussion.

21 COMMISSIONER YAKI: Well, then we should  
22 have a real hearing rather than an abbreviated  
23 briefing, which have very few people invited, which  
24 have more substantiation of different viewpoints,  
25 and --

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1                   COMMISSIONER GAZIANO: I think you helped  
2 identify the witnesses for this hearing.

3                   COMMISSIONER YAKI: -- been opining on  
4 these. I mean this goes back to -- you know, Mr.  
5 Chair, this goes back to my general problem with the  
6 bootstrapping of the briefing format into a hearing  
7 recommendation.

8                   CHAIRMAN REYNOLDS: Commissioner Yaki,  
9 this issue you have voiced your disapproval with the  
10 process that we use, and we have debated this issue.  
11 I do believe that our process can and should be  
12 improved, but I think that the briefing process that  
13 we have in place now, overall it has served us well,  
14 and I recognize that you have a violent disagreement  
15 on that position.

16                   COMMISSIONER GAZIANO: Although for this  
17 particular hearing didn't Commissioner Yaki -- didn't  
18 he identify many of the witnesses for this briefing.  
19 I thought you were pretty pleased with it.

20                   COMMISSIONER YAKI: Actually, no,  
21 Commissioner Gaziano. Don't make those kinds of  
22 assumptions, thank you very much.

23                   CHAIRMAN REYNOLDS: Well, I mean, he was  
24 not --

25                   COMMISSIONER GAZIANO: I was asking a

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1 question, but you seem to be --

2 CHAIRMAN REYNOLDS: There's no crime in  
3 that. If it is, we'd all be in trouble. In any  
4 event --

5 VICE CHAIR THERNSTROM: I have an  
6 alternative proposal, Mr. Chairman, if --

7 CHAIRMAN REYNOLDS: Go ahead.

8 VICE CHAIR THERNSTROM: -- it would be  
9 appropriate to make it. I've got a little problem  
10 with kind of recommendations when this election is  
11 long over also, but a lot of the recommendations  
12 could, in fact, be folded into the findings if they  
13 are not already there, and I think they pretty much  
14 are there.

15 I would be very happy to see simply  
16 findings from this briefing, and the recommendations,  
17 as I say, what is important in those recommendations,  
18 I think most of it is in the findings, and what is not  
19 can be incorporated into the findings unless they are  
20 clearly of a dated nature.

21 COMMISSIONER HERIOT: Mr. Chairman, I  
22 don't think any of the recommendations are of a dated  
23 nature. You know, elections continue to be held in  
24 the future. Most of what we're looking at here are  
25 things that clearly apply into the future. I don't

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1 think that anybody would look at any of our  
2 recommendations here and say that because the 2008  
3 election is over, therefore, these things don't matter  
4 anymore.

5 VICE CHAIR THERNSTROM: Not that they  
6 don't matter, but we just don't have the information  
7 as to what has been done and --

8 COMMISSIONER HERIOT: I don't think  
9 there's anything that we're asserting that we think a  
10 particular thing has or has not been --

11 COMMISSIONER GAZIANO: Yes, again, I think  
12 there's great care in improving upon earlier ones  
13 where we were making conclusions that DOJ, for  
14 example, may have been failing. For example, it  
15 simply says, "DOJ should take aggressive steps to  
16 insure that all states comply with HAVA." That's true  
17 whether they have done it, have not done it, as  
18 failing, are doing an admirable job. I think there  
19 were some questions raised by witnesses on that, and  
20 all we're saying is that DOJ should take aggressive  
21 steps to comply with HAVA.

22 CHAIRMAN REYNOLDS: Well, folks, the  
23 motion on the table right now is to use Commissioner  
24 Heriot's revised findings and recommendations. I  
25 suggest that we vote on that, and then we just start

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1 marching down through the findings and recommendations  
2 and entertain whatever amendments or substitutions  
3 that folks would like to make.

4 COMMISSIONER HERIOT: Are we voting then?

5 COMMISSIONER GAZIANO: Call the question.

6 VICE CHAIR THERNSTROM: Somebody is trying  
7 to --

8 COMMISSIONER HERIOT: Call the question.

9 VICE CHAIR THERNSTROM: Somebody was  
10 trying to talk and I couldn't hear them.

11 COMMISSIONER GAZIANO: Somebody might have  
12 gotten off.

13 COMMISSIONER HERIOT: Yes, somebody just  
14 hung up, I think.

15 COMMISSIONER GAZIANO: Call the question.

16 CHAIRMAN REYNOLDS: Okay.

17 VICE CHAIR THERNSTROM: Can we find out  
18 who, if anybody --

19 COMMISSIONER HERIOT: We'll be able to  
20 figure that out during the roll call.

21 VICE CHAIR THERNSTROM: All right.

22 CHAIRMAN REYNOLDS: Commissioner Yaki, as  
23 you still on?

24 COMMISSIONER YAKI: Yes, I am.

25 CHAIRMAN REYNOLDS: Commissioner Kirsanow?

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1 COMMISSIONER KIRSANOW: Still here.

2 CHAIRMAN REYNOLDS: All right. Everyone  
3 is on. Okay. If that's the case, Commissioner  
4 Melendez, how do you vote?

5 COMMISSIONER MELENDEZ: Abstain.

6 CHAIRMAN REYNOLDS: Commissioner Kirsanow.

7 COMMISSIONER KIRSANOW: Yes.

8 CHAIRMAN REYNOLDS: Commissioner  
9 Thernstrom.

10 VICE CHAIR THERNSTROM: We are voting  
11 simply on now moving forward on -- I mean, there will  
12 be further discussion on these findings one by one and  
13 recommendations; is that correct?

14 CHAIRMAN REYNOLDS: That is correct, and  
15 the findings that I'm referring to Commissioner  
16 Heriot's revised findings and recommendations.

17 VICE CHAIR THERNSTROM: Right. I  
18 understand that.

19 Okay. All right. Yes.

20 CHAIRMAN REYNOLDS: Commissioner Taylor.

21 COMMISSIONER TAYLOR: Yes.

22 CHAIRMAN REYNOLDS: Commissioner Gaziano?

23 COMMISSIONER GAZIANO: Yes.

24 CHAIRMAN REYNOLDS: Commissioner Heriot.

25 COMMISSIONER HERIOT: Yes.

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1 CHAIRMAN REYNOLDS: Commissioner Yaki.

2 COMMISSIONER YAKI: No.

3 CHAIRMAN REYNOLDS: Okay. My tally:  
4 Commissioner Melendez abstains; Commissioner Yaki  
5 voted against the motion; the remaining Commissioners  
6 voted in favor of the motion. The motion is approved.

7 Okay. I move that the Commission approve  
8 Finding No. 1. Do I need to read this into the  
9 record?

10 COMMISSIONER HERIOT: Do we have to have  
11 separate motions or just separate votes on these?

12 CHAIRMAN REYNOLDS: Separate votes.

13 COMMISSIONER HERIOT: So I don't think you  
14 need to move it. Just, you know, let's do vote on  
15 number one. I don't think you need a second or  
16 anything.

17 COMMISSIONER GAZIANO: Okay. I move that  
18 we not read these into the record since we have them  
19 all before us.

20 CHAIRMAN REYNOLDS: Okay. If that's the  
21 case then, it's open for discussion.

22 VICE CHAIR THERNSTROM: They will be in  
23 the written record anyway, for those who are  
24 interested obviously.

25 CHAIRMAN REYNOLDS: Okay. Does anyone

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1 have any concerns, suggested revisions regarding the  
2 first finding?

3 COMMISSIONER HERIOT: Call the question.

4 CHAIRMAN REYNOLDS: Okay. Commissioner  
5 Melendez, how do you vote?

6 COMMISSIONER MELENDEZ: No.

7 CHAIRMAN REYNOLDS: Commissioner Kirsanow.

8 COMMISSIONER KIRSANOW: Yes.

9 CHAIRMAN REYNOLDS: Commissioner  
10 Thernstrom.

11 VICE CHAIR THERNSTROM: Yes.

12 CHAIRMAN REYNOLDS: Commissioner Taylor.

13 COMMISSIONER TAYLOR: Yes.

14 CHAIRMAN REYNOLDS: Commissioner Gaziano.

15 COMMISSIONER GAZIANO: Yes.

16 CHAIRMAN REYNOLDS: Commissioner Heriot.

17 COMMISSIONER HERIOT: Yes.

18 CHAIRMAN REYNOLDS: Commissioner Yaki?

19 COMMISSIONER YAKI: Abstain.

20 CHAIRMAN REYNOLDS: Okay. Commissioner  
21 Melendez voted against the motion; Commissioner Yaki  
22 abstained; the remaining Commissioners voted in favor  
23 of the motion. The motion to adopt the Finding No. 1  
24 passes.

25 Next up is the second finding. Open for

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1 comments, questions, revisions, substitutions.

2 COMMISSIONER TAYLOR: Question. We take  
3 the election of 2000 as our starting point for  
4 comparison.

5 COMMISSIONER HERIOT: That's what we had  
6 the data for.

7 COMMISSIONER TAYLOR: Okay. I just wanted  
8 that on the record. That's what I wanted to hear.

9 COMMISSIONER HERIOT: Yes, that's what --

10 COMMISSIONER TAYLOR: Okay.

11 VICE CHAIR THERNSTROM: I'm not sure why  
12 the word "only" is "in the year 2000 the Voting  
13 Section sent only 640 federal observers."

14 COMMISSIONER HERIOT: If you want to  
15 strike it, I'm happy with that.

16 VICE CHAIR THERNSTROM: All right. I want  
17 to strike the "only." It implies, you know --

18 COMMISSIONER HERIOT: Only to emphasize  
19 the fact that the numbers went way up. That's all,  
20 but it easily can be struck.

21 VICE CHAIR THERNSTROM: Okay.

22 CHAIRMAN REYNOLDS: Any other comments?

23 COMMISSIONER YAKI: Yes. This is  
24 Commissioner Yaki.

25 This goes to a substantive point which

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1 came out in the briefing, and that is despite the  
2 number of federal observers or monitors, under  
3 guidelines promulgated by DOJ, their ability to  
4 interact with local election officials is extremely  
5 limited and in some ways relegated to a status where  
6 they are actually prohibited by order of DOJ from  
7 interacting with either local election officials or at  
8 the polling place and certainly local registrars or  
9 voters.

10 So I just put that out there to add a  
11 little color to the fact that you may send down 1,500  
12 people, but if all they can do is sit around and watch  
13 and not do anything proactively, it's not as helpful  
14 as perhaps it could be.

15 VICE CHAIR THERNSTROM: Well, but that  
16 seems to me a point that supports voting on  
17 recommendations because that's a point that could be  
18 -- you could ask to be included in the recommendation  
19 section.

20 CHAIRMAN REYNOLDS: Any other questions or  
21 comments?

22 (No response.)

23 CHAIRMAN REYNOLDS: Commissioner Melendez,  
24 how do you vote?

25 COMMISSIONER MELENDEZ: No.

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1 CHAIRMAN REYNOLDS: Commissioner Kirsanow.

2 COMMISSIONER KIRSANOW: Yes.

3 CHAIRMAN REYNOLDS: Commissioner  
4 Thernstrom.

5 VICE CHAIR THERNSTROM: Yes.

6 CHAIRMAN REYNOLDS: Commissioner Taylor.

7 COMMISSIONER TAYLOR: Yes.

8 CHAIRMAN REYNOLDS: Commissioner Gaziano.

9 COMMISSIONER GAZIANO: Yes.

10 CHAIRMAN REYNOLDS: Commissioner Heriot.

11 COMMISSIONER HERIOT: Yes.

12 CHAIRMAN REYNOLDS: Commissioner Yaki.

13 COMMISSIONER YAKI: No.

14 CHAIRMAN REYNOLDS: Okay. Commissioners  
15 Melendez and Yaki voted no; the remaining  
16 Commissioners voted in the affirmative. The motion  
17 passes.

18 We're up to the third finding. Questions,  
19 comments, substitutions, revisions?

20 VICE CHAIR THERNSTROM: You see, this goes  
21 back to my point about folding in recommendations into  
22 the findings. This really is a recommendation. More  
23 action will be needed. I'm looking at four here.

24 COMMISSIONER GAZIANO: We're on three.

25 COMMISSIONER HERIOT: We're on three.

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1 COMMISSIONER GAZIANO: We're on three.

2 VICE CHAIR THERNSTROM: I'm sorry. I was  
3 continuing to read ahead. Okay. I'm sorry.

4 COMMISSIONER YAKI: While you're reading  
5 that, this is Commissioner Yaki.

6 My objection with Finding No. 3 is that it  
7 falls into the category of you can play with  
8 statistics any way you want. What isn't revealed is  
9 how many complaints were brought to the Department of  
10 Justice, what kind of complaints were investigated,  
11 were brought to the Department of Justice, and what  
12 kinds and type of complaints were the ones that they  
13 chose to enforce during that period of time.

14 I think that you will find a potential  
15 difference of opinion amongst organizations over the  
16 efficacy and, indeed, the selection of the cases that  
17 DOJ brought during that period of time. So the idea  
18 that they were vigorously enforcing and doing all of  
19 these wonderful things I think was belied by some of  
20 the other testimony during the hearing and why I will  
21 be opposing this particular section as well.

22 COMMISSIONER HERIOT: Well, that will be  
23 very appropriate for you to put into your  
24 Commissioner's statement I would think.

25 VICE CHAIR THERNSTROM: I would not object

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1 to a further sentence in three which simply said,  
2 Commissioner Yaki, what you just said, differing  
3 views. It is important to distinguish between  
4 enforcement of one kind and another. I would not have  
5 any problem in expanding three to include a final  
6 sentence to include your point.

7 COMMISSIONER TAYLOR: And, Commissioner  
8 Yaki, this is Commissioner Taylor.

9 I think your point is not inconsistent  
10 with what we have in front of us, and everybody  
11 understands the difference between simply quantifying  
12 the number of cases prosecuted under a statute and  
13 discussing the, quote, quality of those prosecutions  
14 and saying in the statement that there were mixed  
15 opinions on what aspects were enforced, but the  
16 numbers speak for themselves.

17 So, I mean, I don't think your comment is  
18 being inconsistent with what we have before us, and I  
19 would agree with Commissioner Thernstrom that that is  
20 something that could be added.

21 COMMISSIONER GAZIANO: But I think it  
22 might -- that kind of detail -- be more appropriate in  
23 our statements. I know there were some disputes  
24 about, for example, the case that was brought in  
25 Mississippi, the Knoxby case, but I think it was

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1 absolutely an appropriate case. So I don't know that  
2 we need to -- that's the kind of thing that we can  
3 debate --

4 VICE CHAIR THERNSTROM: Well, two  
5 sentences.

6 COMMISSIONER GAZIANO: -- in our -- some  
7 people were displeased about the Knoxby prosecution,  
8 but the citizens seemed quite delighted.

9 VICE CHAIR THERNSTROM: But two sentences  
10 that acknowledge disagreement of the sort that  
11 Commissioner Yaki alluded to would not in any way -- I  
12 think would strengthen, in fact, this finding.

13 COMMISSIONER TAYLOR: Let me say --

14 COMMISSIONER HERIOT: Well, if we wanted  
15 to put in something about the Knoxby case in  
16 particular --

17 VICE CHAIR THERNSTROM: No, no.

18 COMMISSIONER HERIOT: -- I think that's  
19 the one where I've heard that there was dispute. I  
20 don't know that --

21 VICE CHAIR THERNSTROM: I don't think we  
22 have to get into, but to say that there were --  
23 whatever.

24 COMMISSIONER TAYLOR: Hold on. This is  
25 Commissioner Taylor.

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1 Commissioner Yaki, this conversation in my  
2 view is only relevant if it is going to draw your  
3 support for the motion. If a sentence along the lines  
4 which you described would draw your support for this  
5 finding if we added it, I'd be inclined to continue  
6 this discussion. If it's not, then we should move on,  
7 in my view.

8 CHAIRMAN REYNOLDS: Commissioner Yaki?

9 COMMISSIONER YAKI: So what Commissioner  
10 Taylor is saying in essence is that if I choose to  
11 attempt to put lipstick on this creature that --

12 CHAIRMAN REYNOLDS: Creature pig?

13 COMMISSIONER YAKI: No, I wasn't going to  
14 say that.

15 -- that I'm naturally going to have to  
16 vote for it?

17 VICE CHAIR THERNSTROM: Well, no.

18 CHAIRMAN REYNOLDS: No, no.

19 COMMISSIONER YAKI: I think that is  
20 flawed. I think this section is entirely flawed. If  
21 the majority were of such a mind to try and provide a  
22 modicum of balance, I think that would be a smart  
23 political thing to do, but if they choose not to upon  
24 the requirement of me voting for it, forget it.

25 COMMISSIONER TAYLOR: No, no. Let me say

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1 what I mean and what I mean is that I took your  
2 suggestion and your thought as a helpful suggestion  
3 and a positive suggestion that would, indeed,  
4 strengthen the finding and make it more complete, and  
5 that I would welcome it. If your offer was an offer  
6 to join in the process and support it, I am there with  
7 you.

8 COMMISSIONER YAKI: But that's exactly  
9 what I just said to Commissioner Taylor, which is that  
10 if --

11 COMMISSIONER TAYLOR: I just like it when  
12 I say it better.

13 COMMISSIONER YAKI: -- my support for this  
14 finding is conditioned upon -- is only -- let me  
15 restate that.

16 If you're saying that your only reason for  
17 including my comments would be to gain my support for  
18 this particular finding, my response is you should do  
19 it anyway. The majority should do it anyway as a  
20 matter of balance, but to me the balance is still  
21 struck far, far egregiously on the other side.

22 COMMISSIONER GAZIANO: Do you have a  
23 sentence -- do you have a sentence to propose?

24 CHAIRMAN REYNOLDS: So it was an offer of  
25 compromise. The compromise wasn't good enough. So

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1 I'll call the question at this point.

2 Commissioner Melendez.

3 COMMISSIONER MELENDEZ: No.

4 CHAIRMAN REYNOLDS: Commissioner Kirsanow.

5 COMMISSIONER KIRSANOW: Yes.

6 CHAIRMAN REYNOLDS: Commissioner  
7 Thernstrom.

8 VICE CHAIR THERNSTROM: I'm abstaining. I  
9 don't understand why we can't add just another  
10 sentence here and why --

11 COMMISSIONER GAZIANO: We haven't heard a  
12 concrete sentence.

13 VICE CHAIR THERNSTROM: Yes. Why  
14 Commissioner Yaki can't come forward with a concrete  
15 sentence that I would be happy to vote for.

16 CHAIRMAN REYNOLDS: Commissioner Taylor.  
17 Commissioner Taylor.

18 COMMISSIONER TAYLOR: Yes. I vote aye.

19 CHAIRMAN REYNOLDS: I'm sorry. You vote  
20 what?

21 COMMISSIONER TAYLOR: I vote aye.

22 CHAIRMAN REYNOLDS: Okay. Commissioner  
23 Gaziano.

24 COMMISSIONER GAZIANO: Yes.

25 CHAIRMAN REYNOLDS: Commissioner Heriot.

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1 COMMISSIONER HERIOT: Yes.

2 CHAIRMAN REYNOLDS: Commissioner Yaki.

3 COMMISSIONER YAKI: Commissioner Yaki  
4 would have come up with a sentence but he wasn't going  
5 to support it in the end.

6 (Laughter.)

7 COMMISSIONER YAKI: So the answer is no.  
8 It's your choice whether you want to put it in there  
9 or not. By choosing not to, you simply bias the  
10 report even more and from that point of view it helps  
11 me out. So thank you very much.

12 COMMISSIONER GAZIANO: Let the record  
13 reflect that Commissioner Yaki did not offer a  
14 sentence. He just complained.

15 CHAIRMAN REYNOLDS: Okay, okay. Hold on,  
16 hold on. Okay. I am going to vote against the --

17 COMMISSIONER YAKI: I didn't see you -- I  
18 didn't see you offering anything, Commissioner  
19 Gaziano.

20 CHAIRMAN REYNOLDS: Okay. Okay, folks.  
21 The discussion is over. We're just voting now.

22 There are three votes against the motion.  
23 I'm going to vote against --

24 COMMISSIONER YAKI: Grow up, Todd.

25 CHAIRMAN REYNOLDS: There are three votes

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1 against the motion, four in favor, and one abstention.

2 The motion passes.

3 STAFF DIRECTOR DANNENFELSER: Mr.  
4 Chairman, this is Staff Director. I've been advised  
5 that for the benefit of the public that is in  
6 attendance at the meeting that we do need to read the  
7 findings and recommendations into the record as part  
8 of a Sunshine Act requirement.

9 CHAIRMAN REYNOLDS: Okay.

10 VICE CHAIR THERNSTROM: We don't have to  
11 start from the beginning, I hope.

12 CHAIRMAN REYNOLDS: I move that the  
13 following finding, Finding No. 4, be approved.

14 COMMISSIONER YAKI: Point of order.  
15 Shouldn't we, if that is the case, shouldn't we then  
16 rescind the votes so far.

17 COMMISSIONERS: No.

18 COMMISSIONER GAZIANO: We can read them  
19 into -- by the way, I'm not sure I agree with that  
20 interpretation of the Sunshine Act, but I don't mind.

21 I don't mind for those who think that's the case re-  
22 reading these into the record.

23 VICE CHAIR THERNSTROM: But can we re-read  
24 into the record one through three later and move on at  
25 this point?

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1                   CHAIRMAN REYNOLDS:     Sure.     Okay.     I'm  
2     reading number four, Finding No. 4, into the record.  
3     "Despite this expansion of the Voting Section  
4     elections and enforcement activities, various problems  
5     continue to exist.     For example, some states have  
6     failed to comply with HAVA's requirement that each  
7     state implement in a uniform and nondiscriminatory  
8     manner a single, uniform, centralized, interactive,  
9     computerized, statewide voting registration list  
10    and/or with the minimum requirements for that list.  
11    This has resulted in deceased, or no longer residents  
12    or other ineligible voters remaining on the rolls.  
13    Although the voting rights section has engaged in some  
14    enforcement activities in this area, more action will  
15    be needed to bring all states into compliance."

16                                 Is there a second?

17                   VICE CHAIR THERNSTROM:   Second.

18                   CHAIRMAN REYNOLDS:   Discussion?

19                   VICE CHAIR THERNSTROM:   Well, this is what  
20    I -- I mean, this was my point before when I was  
21    reading four instead of three by mistake.     There  
22    really is an implicit recommendation here, and if we  
23    have problems with the recommendations, it seems to me  
24    the solution is to have them read exactly as four  
25    does, which really contains a recommendation, and you

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1 know, the others, the recommendations that we think  
2 are important can be folded into the findings as in  
3 this case one is.

4 COMMISSIONER GAZIANO: I'm not sure that  
5 the distinction between findings and recommendations  
6 needs to always be perfect, but I still see this as an  
7 objective. The last phrase of this is an objective  
8 statement, which is supported by a lot of testimony  
9 from the briefing.

10 "More action will be needed to bring all  
11 states in the" -- I don't think any of the states deny  
12 that --

13 COMMISSIONER HERIOT: It doesn't even  
14 state whose action.

15 COMMISSIONER GAZIANO: Yes.

16 COMMISSIONER HERIOT: It says more action  
17 is needed.

18 COMMISSIONER GAZIANO: I don't think the  
19 states deny this. The testimony as I remember it is  
20 that states are years behind in complying and that  
21 there has been a fair amount of attention. I'm not  
22 saying that -- we're not saying at least in this  
23 finding who's at fault and what it's going to take.  
24 We're just making the observation that there's still  
25 work to be done here. So it's still kind of an

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1 objective statement to make.

2 COMMISSIONER HERIOT: Yes, it's not a  
3 recommendation. More action refers to any. It  
4 doesn't even say whose action.

5 VICE CHAIR THERNSTROM: Well, wait a  
6 minute. More action will be needed. If you changed  
7 "will be" to "is needed," it is a recommendation.

8 COMMISSIONER HERIOT: To whom? It doesn't  
9 recommend anything. It just says the law is not being  
10 complied with now.

11 VICE CHAIR THERNSTROM: Well --

12 COMMISSIONER HERIOT: You know, whereas in  
13 the recommendations we're saying that DOJ should do  
14 something.

15 CHAIRMAN REYNOLDS: Well, I mean, the last  
16 sentence does smell like a recommendation to me. I  
17 mean, wouldn't an appropriate --

18 COMMISSIONER GAZIANO: Is that critical if  
19 some of our findings sound sort of --

20 CHAIRMAN REYNOLDS: Commissioner Gaziano,  
21 let me finish the thought.

22 Would everyone's concerns be addressed if  
23 we made the last sentence or at least some -- some  
24 formulation of the last sentence, if we just made it  
25 into a stand alone recommendation?

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1                   COMMISSIONER HERIOT: No, no, no, no, no,  
2 because the thing is you can strike it entirely, and  
3 that's fine, but I had thought that it was important  
4 to acknowledge that the Voting Section has done  
5 something. It just hasn't done --

6                   COMMISSIONER GAZIANO: It hasn't completed  
7 its work.

8                   COMMISSIONER HERIOT: Yes, it just --

9                   VICE CHAIR THERNSTROM: Recommendation 3  
10 talks about HAVA's requirement, and you can put in  
11 there the Voting Section has done something. I mean,  
12 it quacks like a duck. It is a duck, whatever.

13                  CHAIRMAN REYNOLDS: So the two proposals -  
14 -

15                  VICE CHAIR THERNSTROM: I'm agreeing with  
16 you, Mr. Chairman.

17                  CHAIRMAN REYNOLDS: Well, I see two  
18 proposals. One is to either fold that last sentence  
19 or some configuration of that last sentence into  
20 another recommendation.

21                         Number two, have it be a stand alone  
22 recommendation.

23                         And number three is to strike it in its  
24 entirety.

25                  COMMISSIONER HERIOT: No, it's the same.

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1 The only thing that's in this sentence that matters  
2 here is acknowledging that we're not accusing the  
3 voting rights section of having done nothing because  
4 they have done something. We can take that last  
5 sentence in the findings, and we can strike it as long  
6 as we then take the part about the Voting Section has  
7 engaged in some enforcement activities in this area,  
8 should somehow be folded into three.

9 COMMISSIONER GAZIANO: And could I  
10 suggest --

11 VICE CHAIR THERNSTROM: Three is a  
12 recommendation.

13 COMMISSIONER GAZIANO: Could I suggest an  
14 amendment to just complete the thought? Maybe the  
15 last sentence could read or I propose that it read,  
16 "Although the Voting Section has engaged in some  
17 enforcement activities in this area, not all states  
18 are in compliance."

19 CHAIRMAN REYNOLDS: That works for me.

20 VICE CHAIR THERNSTROM: That's fine.

21 COMMISSIONER YAKI: This is Commissioner  
22 Yaki.

23 This is yet another example of how we take  
24 one very small part of an issue, drain all of the life  
25 out of it, and turn it into one particular orientation

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1 about HAVA when the fact of the matter is that -- and,  
2 again, this was outside the record, inside the record  
3 and it was outside the record as shown during the  
4 electoral campaign -- and that had to do with the fact  
5 that there were plenty of instances of overzealous  
6 Secretaries of State waving the flag of HAVA to purge  
7 tens of thousands of voters who should not have been  
8 and never should have been purged.

9 Now, that actually was brought up in  
10 testimony during the hearing, and yet we seem to be  
11 concerned about dead people on the list rather than  
12 the live people who are getting shut out and kicked  
13 off as well in the implementation of HAVA. I just  
14 want to point that out.

15 COMMISSIONER HERIOT: We've actually --

16 CHAIRMAN REYNOLDS: Unless I'm mistaken, I  
17 believe that the concern that you just put on the  
18 table is in either a finding or recommendation.

19 COMMISSIONER HERIOT: Yes, it's in the  
20 recommendation.

21 VICE CHAIR THERNSTROM: I mean, I think  
22 it's an extremely important point also, but --

23 CHAIRMAN REYNOLDS: And one that's  
24 recognized in a recommendation.

25 VICE CHAIR THERNSTROM: Yes, and one

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1 that's recognized in one of the recommendations. I  
2 agree. I mean, again, if we wanted --

3 COMMISSIONER YAKI: I looked at those  
4 recommendations. It's more about getting rid of --  
5 telling states to get rid of the dead wood. Well,  
6 some states for their own purposes, whether political  
7 or not, decided to create a definition of dead wood  
8 that would have knocked out thousands who voted, and  
9 in fact, DOJ had to intervene or threaten to intervene  
10 in two of those instances to prevent the  
11 misinterpretation of HAVA by those states.

12 That was -- the misinterpretation of HAVA  
13 was brought up during the discussions, is not  
14 recognized in this particular finding, and that is why  
15 I am going to vote against it.

16 CHAIRMAN REYNOLDS: Would you like to make  
17 a recommendation or revision?

18 COMMISSIONER GAZIANO: The last sentence  
19 of Recommendation 3, I think, touched on Commissioner  
20 Yaki's concern. I'm not sure that's enough for him,  
21 but it is there.

22 VICE CHAIR THERNSTROM: Commissioner Yaki,  
23 as somebody who understands what you're saying  
24 perfectly well and is sympathetic to what you're  
25 saying as well, all I would like from you is for you

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1 to actually come up with language that we could  
2 consider, and that was what was frustrating when we  
3 were talking about an additional sentence for whatever  
4 finding that was.

5 You know, all I was asking --

6 COMMISSIONER YAKI: Commissioner  
7 Thernstrom, I would have come up with a sentence, but  
8 Commissioner Taylor says they would only accept it if  
9 I voted for it. To me the point is --

10 COMMISSIONER GAZIANO: Because that --

11 COMMISSIONER YAKI: -- something which I  
12 believe against. If you want to make -- if you can  
13 make it better --

14 CHAIRMAN REYNOLDS: Commissioner Yaki.

15 COMMISSIONER YAKI: -- because that's what  
16 you should be doing, that should be a prerogative of  
17 the majority, not for me to legitimize a process which  
18 I fundamentally disagree with.

19 VICE CHAIR THERNSTROM: But we were trying  
20 to alter the process.

21 COMMISSIONER YAKI: As to number four, if  
22 you want a sentence, I would simply state this, and  
23 that would benefit in the "for example" sentence after  
24 Footnote No. H, which is -- or Footnote No. -- let's  
25 see. Where's that? Hang on.

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1 COMMISSIONER TAYLOR: While he's looking  
2 for that, for the record, that's not what I said.

3 This is Commissioner Taylor.

4 COMMISSIONER YAKI: It was what you said,  
5 Commissioner Taylor.

6 COMMISSIONER TAYLOR: No, no, no.

7 COMMISSIONER YAKI: You said would I  
8 support it. This has resulted in --

9 COMMISSIONER TAYLOR: That's not -- that's  
10 not --

11 COMMISSIONER YAKI: -- Number 8, and then  
12 I would add if you want, I would add a sentence that  
13 says, "Additional concerns have been raised with  
14 regard to states' overzealous implementation of HAVA  
15 resulting in thousands of legitimate voters being  
16 disenrolled and disenfranchised.

17 VICE CHAIR THERNSTROM: Perhaps thousands.  
18 We don't have an accurate count.

19 CHAIRMAN REYNOLDS: -- legitimate  
20 eligible?

21 COMMISSIONER YAKI: Eligible -- no, no,  
22 not eligible. I mean they are on the rolls. I would  
23 just say thousands of voters being disenrolled and  
24 disenfranchised.

25 CHAIRMAN REYNOLDS: Concerns with that

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1 revision?

2 (No response.)

3 CHAIRMAN REYNOLDS: Okay. I call the  
4 question. Commissioner Melendez?

5 COMMISSIONER MELENDEZ: No.

6 CHAIRMAN REYNOLDS: That was a no?

7 COMMISSIONER MELENDEZ: No.

8 VICE CHAIR THERNSTROM: Wait a minute.  
9 I'm sorry, Mr. Chairman. Where are we? Commissioner  
10 Yaki has suggested a sentence. Are we considering  
11 that sentence or not?

12 CHAIRMAN REYNOLDS: Okay. Let's be clear.  
13 Does anyone object to the revision offered by  
14 Commissioner Yaki?

15 COMMISSIONER HERIOT: Yes.

16 COMMISSIONER GAZIANO: Yes.

17 VICE CHAIR THERNSTROM: I need to hear it  
18 again.

19 COMMISSIONER YAKI: After Footnote 9,  
20 which cites the compelling testimony of Hans  
21 Spakovsky, I would add, "Additional concerns have been  
22 raised regarding perceived overzealous enforcement of  
23 HAVA that has resulted in registered voters being  
24 disenrolled and disenfranchised."

25 COMMISSIONER GAZIANO: With the advent of

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1 provisional balloting, no one should have been  
2 disenfranchised. Everyone has a right to vote.

3 COMMISSIONER YAKI: That assumes perfect  
4 information for all those people who were disenrolled,  
5 and I think that the record is more than adequate and  
6 more than clear that that doesn't always happen.

7 COMMISSIONER GAZIANO: Well, your second  
8 formulation is better than your first because you were  
9 complaining of thousands who didn't get to vote if  
10 they weren't on the rolls, but I still think that it  
11 is a misleading sentence.

12 COMMISSIONER HERIOT: Yes, but you can  
13 just put that they have been taken from the rolls.  
14 You don't have to say they were disenfranchised.

15 CHAIRMAN REYNOLDS: I'm sorry,  
16 Commissioner.

17 COMMISSIONER YAKI: If you are purged  
18 after the deadline for registration, you most  
19 certainly are disenfranchised. You are not able then  
20 to, unless by court order you're restored to the voter  
21 rolls, you cannot come back with a voter reg. form and  
22 say, "Let me vote. You kicked me off thinking I was  
23 dead."

24 COMMISSIONER YAKI: Am I wrong to say that  
25 you can cast a provisional ballot?

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1                   COMMISSIONER GAZIANO: Can you give us a  
2 minute? We're trying to think of a friendly  
3 amendment.

4                   CHAIRMAN REYNOLDS: Okay. The amendment  
5 that Commissioner Yaki offered, Gail, Todd, do you  
6 have concerns?

7                   COMMISSIONER HERIOT: Hold on for just a  
8 second.

9                   COMMISSIONER GAZIANO: We're looking at  
10 another sentence that we might be able to offer  
11 Commissioner Yaki in lieu of his.

12                  VICE CHAIR THERNSTROM: I mean, I was at a  
13 polling place on Election Day monitoring this stuff,  
14 and people were given provisional ballots if there was  
15 any question. Now, it may have been my local election  
16 polling place.

17                  COMMISSIONER YAKI: Commissioner  
18 Thernstrom, I was on the voter protection team in the  
19 last election,

20                  VICE CHAIR THERNSTROM: Yes.

21                  COMMISSIONER YAKI: And I can tell you  
22 that the distribution of provisional ballots varied  
23 from jurisdiction to jurisdiction.

24                  VICE CHAIR THERNSTROM: Okay. I'll  
25 believe you on that. I'm willing to go with some

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1 modification here that acknowledges your point. I'm  
2 happy to, more than willing. I, you know, believe in  
3 everybody being able to vote who is eligible to do so.

4 COMMISSIONER KIRSANOW: Kirsanow here.

5 Just a point of information. I will be  
6 off the call for approximately ten minutes, but I will  
7 rejoin.

8 CHAIRMAN REYNOLDS: Okay.

9 COMMISSIONER GAZIANO: We may or may not  
10 have a friendly amendment. Could we -- Commissioner  
11 Yaki, would you mind reading your proposed addition  
12 again?

13 COMMISSIONER YAKI: Can the reporter do  
14 it? Because I've simply been saying it for the past  
15 few times. Each time I say it, it changes a little  
16 bit. So for accuracy I would prefer that the  
17 transcript be read back.

18 COMMISSIONER GAZIANO: Well, that's fine.  
19 It's gotten a little bit better your second time. I  
20 was hoping your third time it might even reflect some  
21 of our additional concerns. If you could end with,  
22 for example, that legitimate voters -- I think Gail  
23 may have a rephrasing of your -- that legitimate  
24 voters were purged from the rolls. So I might be able  
25 to go with it. When you add the extra thousands have

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1 been disenfranchised, I have a little bit of a  
2 concern.

3 CHAIRMAN REYNOLDS: Okay. Gail, are you  
4 in a position to just read the proposed --

5 COMMISSIONER HERIOT: I think I can do  
6 this one working off Commissioner Yaki's proposal.  
7 "Additional concerns have been raised regarding  
8 perceived overzealous enforcement of HAVA that has  
9 sometimes resulted in legitimate voters being  
10 improperly purged from the rolls."

11 CHAIRMAN REYNOLDS: Commissioner Yaki.

12 COMMISSIONER YAKI: Fine with me.

13 COMMISSIONER HERIOT: There it is then.  
14 Should I read it again?

15 VICE CHAIR THERNSTROM: Yes, read it once  
16 more.

17 COMMISSIONER HERIOT: "Additional concerns  
18 have been raised regarding perceived overzealous  
19 enforcement of HAVA that has sometimes resulted in  
20 legitimate voters being improperly purged from the  
21 rolls."

22 VICE CHAIR THERNSTROM: Good.

23 COMMISSIONER YAKI: I think it should be  
24 thousands because that's exactly the numbers that were  
25 being -- that were raised in Ohio, in Montana, but you

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1 know, whatever.

2 CHAIRMAN REYNOLDS: Okay, all right. With  
3 that friendly amendment, I call the question.  
4 Commissioner Melendez.

5 COMMISSIONER MELENDEZ: No.

6 COMMISSIONER GAZIANO: We're voting on the  
7 additional sentence or are we voting on the --

8 COMMISSIONER HERIOT: Are we voting on the  
9 whole thing or is it the friendly amendment so that we  
10 can do the whole thing now?

11 VICE CHAIR THERNSTROM: We can do the  
12 whole thing.

13 COMMISSIONER HERIOT: Unless it's an  
14 unfriendly amendment. If somebody does not feel that  
15 it is friendly.

16 VICE CHAIR THERNSTROM: No, no, no. We  
17 can do the whole thing. It was a friendly amendment.

18 CHAIRMAN REYNOLDS: Commissioner Melendez.

19 COMMISSIONER MELENDEZ: No.

20 CHAIRMAN REYNOLDS: Commissioner Kirsanow,  
21 have you returned?

22 (No response.)

23 CHAIRMAN REYNOLDS: Commissioner  
24 Thernstrom.

25 COMMISSIONER KIRSANOW: I am back, but I

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1 was off. So I can't. I don't know. I'm going to  
2 have to abstain.

3 CHAIRMAN REYNOLDS: Okay. Vice Chair  
4 Thernstrom.

5 VICE CHAIR THERNSTROM: Yes.

6 COMMISSIONER YAKI: We're voting on your  
7 pension, Commissioner Kirsanow.

8 VICE CHAIR THERNSTROM: I'm voting on my  
9 what?

10 COMMISSIONER YAKI: We're voting on your  
11 pension, Commissioner Kirsanow.

12 CHAIRMAN REYNOLDS: Commissioner Taylor.

13 COMMISSIONER TAYLOR: Yes.

14 CHAIRMAN REYNOLDS: Commissioner Gaziano.

15 COMMISSIONER GAZIANO: Yes.

16 CHAIRMAN REYNOLDS: Commissioner Heriot.

17 COMMISSIONER HERIOT: Yes.

18 CHAIRMAN REYNOLDS: Commissioner Yaki.

19 COMMISSIONER YAKI: No.

20 CHAIRMAN REYNOLDS: Okay. We have  
21 Commissioners Melendez and Yaki voting no;  
22 Commissioner Kirsanow abstaining; the remaining  
23 Commissioners voting in the affirmative. The motion  
24 passes.

25 Next up I move that we approve the

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1 following finding, which is Finding No. 5. I'm going  
2 to read it into the record.

3 "Ensuring that overseas military voters  
4 are able to exercise their right to vote remains a  
5 serious problem. It can take paper ballots 30 days to  
6 get to a combat soldier in Iraq or Afghanistan and  
7 another 30 days to get the ballot back to the  
8 appropriate jurisdiction. Even if upon receipt of the  
9 ballot the serviceman or woman immediately votes and  
10 sends it back, the chances that it will get back in  
11 time to be counted may be only 50-50 so long as paper  
12 ballots are the method by which servicemen and women  
13 must vote. It is crucial that the Voting Section  
14 stand ready for immediate action when violations of  
15 the" --

16 COMMISSIONER GAZIANO: UOCAVA.

17 CHAIRMAN REYNOLDS: No. What is this?

18 VICE CHAIR THERNSTROM: It's UOCAVA.

19 CHAIRMAN REYNOLDS: Okay. OCAVA.

20 VICE CHAIR THERNSTROM: UOCAVA.

21 CHAIRMAN REYNOLDS: "And other applicable  
22 laws occur since time will be of the essence. Between  
23 2001 and 2008, the Voting Section has brought multiple  
24 lawsuits to enforce UOCAVA in the courts. On several  
25 occasions the relief sought was ultimately attained

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1 through state legislation."

2 Is there a second?

3 COMMISSIONER GAZIANO: Second.

4 VICE CHAIR THERNSTROM: Second, but let  
5 the record show it is UOCAVA.

6 COMMISSIONER HERIOT: I have a friendly  
7 amendment to my own, and that is in honor of our brave  
8 servicemen and women in the Navy, Air Force and  
9 Marines, that word "soldier" in the third line should  
10 be changed to serviceman or woman.

11 VICE CHAIR THERNSTROM: Thank you.

12 COMMISSIONER GAZIANO: Isn't soldier sex,  
13 gender --

14 COMMISSIONER HERIOT: It's not service  
15 neutral. It's not service neutral.

16 COMMISSIONER GAZIANO: Oh, oh.

17 COMMISSIONER HERIOT: A sailor is not a  
18 soldier.

19 COMMISSIONER GAZIANO: Sorry.

20 CHAIRMAN REYNOLDS: Gail, I have a  
21 question. The line that reads "may be only 50-50," is  
22 there data to support that statement?

23 COMMISSIONER HERIOT: There's testimony in  
24 our briefing to support that, but it only says "may  
25 only be 50-50." So we fudged a little bit.

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1 CHAIRMAN REYNOLDS: Okay. Any other  
2 questions or comments?

3 (No response.)

4 CHAIRMAN REYNOLDS: Okay. Commissioner  
5 Melendez, how do you vote?

6 COMMISSIONER MELENDEZ: No.

7 CHAIRMAN REYNOLDS: Commissioner Kirsanow.  
8 Commissioner Kirsanow.

9 (No response.)

10 CHAIRMAN REYNOLDS: Okay. We'll skip him  
11 for now.

12 Vice Chair Thernstrom.

13 VICE CHAIR THERNSTROM: Yes.

14 CHAIRMAN REYNOLDS: Commissioner Taylor.

15 COMMISSIONER TAYLOR: Yes.

16 CHAIRMAN REYNOLDS: Commissioner Gaziano.

17 COMMISSIONER GAZIANO: Yes.

18 CHAIRMAN REYNOLDS: Commissioner Heriot.

19 COMMISSIONER HERIOT: Yes.

20 CHAIRMAN REYNOLDS: Commissioner Yaki.

21 COMMISSIONER YAKI: Yes.

22 CHAIRMAN REYNOLDS: Was that a yes?

23 COMMISSIONER YAKI: Yes.

24 CHAIRMAN REYNOLDS: Okay. Commissioner  
25 Kirsanow?

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1 (No response.)

2 CHAIRMAN REYNOLDS: okay. He is off the  
3 line. Commissioner Melendez voted against the  
4 finding; Commissioner Kirsanow did not participate in  
5 the vote; the remaining Commissioners vote in the  
6 affirmative. The motion passes.

7 Next up, Finding No. 6. I move that  
8 Section 303(b)(4)(A)(i) of HAVA amend NVRA to require  
9 that voter registration applications created pursuant  
10 to that act specifically ask, "Are you a citizen of  
11 the United States of America?" If that question is  
12 left unanswered, Section 303(b)(4)(B) direct the  
13 Registrar to notify the applicant of that failure and  
14 provide a second opportunity to complete the form,  
15 thus making it clear that applicants who fail to  
16 answer that question in the affirmative are not to be  
17 registered (or if registered, are registered only for  
18 state elections in which non-citizens are permitted to  
19 vote). Yet in several states, Ohio, South Dakota and  
20 Iowa, applications are reportedly accepted when the  
21 citizenship question has been left unanswered. This  
22 may be the result of state officials who do not wish  
23 to go to the trouble of providing a second opportunity  
24 mandated by law and prefer to follow the path of least  
25 resistance by simply accepting the application. This

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1 presents a serious problem as federal law forbids non-  
2 citizens from voting in federal elections. When state  
3 law permits non-citizens to register and vote, they  
4 may only vote using a ballot that does not give them  
5 the opportunity to cast a vote for a candidate for  
6 federal office."

7 Is there a second?

8 COMMISSIONER GAZIANO: Second.

9 CHAIRMAN REYNOLDS: Discussion?

10 (No response.)

11 CHAIRMAN REYNOLDS: Commissioner Melendez,  
12 how do you vote?

13 COMMISSIONER MELENDEZ: No.

14 CHAIRMAN REYNOLDS: Commissioner Kirsanow,  
15 are you back on the line?

16 (No response.)

17 CHAIRMAN REYNOLDS: Vice Chair Thernstrom.

18 VICE CHAIR THERNSTROM: Yes.

19 CHAIRMAN REYNOLDS: Commissioner Taylor.

20 COMMISSIONER TAYLOR: Yes.

21 CHAIRMAN REYNOLDS: Commissioner Gaziano.

22 COMMISSIONER GAZIANO: Yes.

23 CHAIRMAN REYNOLDS: Commissioner Heriot.

24 COMMISSIONER HERIOT: Yes.

25 CHAIRMAN REYNOLDS: Commissioner Yaki.

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1 Commissioner Yaki.

2 COMMISSIONER YAKI: I just want to state  
3 that given the breadth of this here and the fact that  
4 most of these recommendations focus on HAVA and  
5 testimony brought up by Hans Spakovsky really quite, I  
6 think, misses the point of what that briefing was  
7 about, and I vote no.

8 CHAIRMAN REYNOLDS: Okay. Commissioners  
9 Melendez and Yaki voted no; Commissioner Kirsanow did  
10 not participate in the vote; the remaining  
11 Commissioners voted in the affirmative. The motion  
12 passes.

13 Now we're up to the recommendations. I  
14 move that we approve the first recommendation, which  
15 reads, "DOJ should be commended for its willingness  
16 through the Voting Section to play an aggressive and  
17 proactive role in preventing voting rights violations,  
18 especially through its dramatic expansion of its  
19 election monitoring function. In any democracy,  
20 elections must not only be fair. They must appear  
21 fair if the results are to be regarded as legitimate.  
22 The Voting Section's efforts have made an important  
23 contribution to insuring both the appearance and the  
24 reality of election integrity."

25 Is there a second?

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1 VICE CHAIR THERNSTROM: Second.

2 CHAIRMAN REYNOLDS: Discussion?

3 COMMISSIONER YAKI: What is the purpose of  
4 this section?

5 VICE CHAIR THERNSTROM: Recommendation,  
6 you mean?

7 COMMISSIONER YAKI: What is the purpose of  
8 this recommendation? I mean, there is so much counter  
9 -- there were so many counter statements made during  
10 the hearings. The fact that there is a substantial  
11 chorus of criticism of the voting rights section, the  
12 cases that it chose, how it did it, the politization  
13 of that section, I just think this is, for lack of a  
14 better word, garbage and I'm going to vote against it.

15 CHAIRMAN REYNOLDS: Okay. Commissioner  
16 Melendez, how do you vote?

17 COMMISSIONER MELENDEZ: No.

18 CHAIRMAN REYNOLDS: Commissioner Kirsanow,  
19 have you returned?

20 (No response.)

21 CHAIRMAN REYNOLDS: Commissioner  
22 Thernstrom.

23 VICE CHAIR THERNSTROM: Yes.

24 CHAIRMAN REYNOLDS: Commissioner Taylor.

25 COMMISSIONER TAYLOR: I'm going to abstain

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1 on this one.

2 CHAIRMAN REYNOLDS: Commissioner Gaziano.

3 COMMISSIONER GAZIANO: Yes.

4 CHAIRMAN REYNOLDS: Commissioner Heriot.

5 COMMISSIONER HERIOT: Yes.

6 CHAIRMAN REYNOLDS: Commissioner Yaki.

7 COMMISSIONER YAKI: No.

8 VICE CHAIR THERNSTROM: You know, I'm  
9 going to change my -- I'm staring at this. I want to  
10 change my vote to an abstention also.

11 CHAIRMAN REYNOLDS: Interesting.

12 VICE CHAIR THERNSTROM: Well, I just --  
13 you know.

14 CHAIRMAN REYNOLDS: No. It doesn't  
15 require an explanation.

16 VICE CHAIR THERNSTROM: No, I'm sorry. I  
17 was distracted by something before, and I've just  
18 stared at the language again. I'm going to abstain.

19 CHAIRMAN REYNOLDS: Okay. Bear with me,  
20 folks. Okay. I'm just counting up the votes here  
21 before deciding how I will vote. I am also -- okay.  
22 (Pause.)

23 VICE CHAIR THERNSTROM: Is that how you  
24 decide how to vote, Mr. Chairman?

25 COMMISSIONER YAKI: Are you running out of

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1 fingers, Mr. Chairman? What's going on here?

2 CHAIRMAN REYNOLDS: No. I'm torn, and I  
3 guess it goes back to the argument that Commissioner  
4 Yaki made earlier about statistics. I believe that  
5 the statement that DOJ and the voting rights section  
6 has been aggressive and proactive rests on those  
7 statistics.

8 COMMISSIONER HERIOT: Especially the  
9 election monitoring function with the number of  
10 observers and monitors that they now have.

11 CHAIRMAN REYNOLDS: I'm sorry,  
12 Commissioner Heriot.

13 COMMISSIONER HERIOT: The sentence is, you  
14 know, focused especially on the expansion of the  
15 election observer program.

16 CHAIRMAN REYNOLDS: Okay.

17 COMMISSIONER YAKI: Those are the monitors  
18 who sit around with their hands in their pockets.

19 CHAIRMAN REYNOLDS: Okay. I'm going to  
20 vote for it.

21 VICE CHAIR THERNSTROM: They don't really  
22 have a choice about how many -- there's a process here  
23 that determines the numbers, but anyway.

24 CHAIRMAN REYNOLDS: Okay. Here's the  
25 vote: three abstentions, two votes against it, three

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1 votes for it. Commissioner Kirsanow did not  
2 participate in the vote. If I understand how our  
3 rules work, this motion passes.

4 Next up, I move that the following --

5 VICE CHAIR THERNSTROM: Mr. Chairman,  
6 there's too many votes there. Do it again.

7 COMMISSIONER GAZIANO: No, he got it.

8 VICE CHAIR THERNSTROM: You got it?

9 COMMISSIONER GAZIANO: Three, two, two and  
10 one; three ayes, two noes, two abstentions, and one  
11 not voting.

12 VICE CHAIR THERNSTROM: Okay, okay. Never  
13 mind.

14 CHAIRMAN REYNOLDS: Hold on now. Hold on.

15 COMMISSIONER HERIOT: You got it.

16 COMMISSIONER GAZIANO: Your math is right.

17 VICE CHAIR THERNSTROM: No, I withdraw my  
18 comment.

19 CHAIRMAN REYNOLDS: Okay. I move that the  
20 following recommendation, Recommendation 2, be  
21 approved. "DOJ's role in prosecuting voter fraud,  
22 such as by doubling voting by nonresidents and voting  
23 by non-citizens, which is assigned to the Public  
24 Integrity Section, is also important. When  
25 illegitimate votes are counted, the votes of

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1 legitimate voters are effectively nullified. Insuring  
2 both the appearance and reality of election integrity  
3 requires that DOJ place a high priority on combating  
4 this voter fraud. We urge DOJ to initiate action to  
5 prevent illegal voting and not simply wait to hear of  
6 and react to specific accusations of wrongdoing."

7 Is there a second?

8 VICE CHAIR THERNSTROM: Second.

9 CHAIRMAN REYNOLDS: Discussion.

10 COMMISSIONER YAKI: This is Commissioner  
11 Yaki.

12 I've just got to say this. We had a fair  
13 amount of testimony on the issues about why do we have  
14 election monitors, why do we have DOJ lawsuits going  
15 on with regard to voter intimidation. There is not a  
16 single mention of voter intimidation, which I believe  
17 has far more scientific and statistical data backing  
18 it up than does the issue of voter fraud.

19 Indeed, in previous hearings that we've  
20 had on the voting rights, it was pretty much there  
21 were statements made by government officials within  
22 the Department of Justice who talked about the low  
23 number of voter fraud cases that were ever brought to  
24 their attention and that major concerns exist and  
25 still remain about voter intimidation.

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1           The fact that we have nothing on that, the  
2 fact that we don't even discuss it, the fact that it  
3 doesn't appear in this in a single word to me  
4 continues to just undermine and underscore the  
5 illegitimacy of this report.

6           CHAIRMAN REYNOLDS: Well, I don't believe  
7 that it renders the report illegitimate, but you do  
8 raise an important point. Voter intimidation was  
9 discussed at the hearing.

10          COMMISSIONER YAKI: In a great way.

11          CHAIRMAN REYNOLDS: And I don't believe  
12 that it's reflected in the findings of fact and  
13 recommendations. Commissioner Yaki or any other  
14 Commissioner, does anyone have any findings of fact  
15 and recommendations that they would like to make on  
16 that particular point?

17          COMMISSIONER TAYLOR: This is Commissioner  
18 Taylor.

19                I would support adding right after "to  
20 prevent illegal voting and voter intimidation."

21          VICE CHAIR THERNSTROM: Yes.

22          COMMISSIONER HERIOT: Not in their  
23 bailiwick, I don't think. That should go in the first  
24 recommendation. That's part of voting rights.

25          CHAIRMAN REYNOLDS: Okay. Where are we?

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1                   COMMISSIONER TAYLOR: So you're saying the  
2 second one is strictly limited to voter fraud?

3                   COMMISSIONER HERIOT: Yes, I don't think  
4 the public integrity section does, unless it happens  
5 to be criminal, but most of that voter intimidation  
6 stuff is done by the Civil Rights Division and the  
7 Voting Section. This just happens to be the way this  
8 breaks down.

9                   CHAIRMAN REYNOLDS: Well, how about this?

10                  COMMISSIONER YAKI: I mean, one of the  
11 points made by, I believe, Mr. Coates during the  
12 hearing was that they have made a determination that  
13 in elections where they believe race can or might be  
14 an issue is one of the factors that go into the  
15 decision to dispatch election monitors and election  
16 observers. That point was made by me during the  
17 hearing with regard to the fact that we had an  
18 historic opportunity with an African American running  
19 for President and asked what his feelings and concerns  
20 were about that with regard to voter intimidation.

21                  This Commission has had a number of  
22 hearings in the past that talk about the scourge of  
23 voter intimidation, about pamphlets and flyers that  
24 appear that tell people the wrong day to vote, that  
25 tell them that they're not registered, that tell them,

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1 you know --

2 CHAIRMAN REYNOLDS: Commissioner Yaki, I  
3 think --

4 COMMISSIONER HERIOT: Mr. Chairman, Mr.  
5 Chairman, I think I can do this.

6 CHAIRMAN REYNOLDS: -- that that issue  
7 should be recognized, and right now we're discussing  
8 the best way to incorporate a finding or  
9 recommendation on that point.

10 COMMISSIONER HERIOT: Yes, Mr. Chairman.  
11 I think I know where to do it. You know, the point  
12 here is that that's -- you know, when Commissioner  
13 Yaki says that it was Mr. Coates who brought that up,  
14 that's probably right. That's my point. That's part  
15 of what the Civil Rights Division does.

16 So I think the way to accommodate this is  
17 to go back up to Recommendation No. 1 where we are  
18 talking about the Voting Section and we are talking  
19 about the Civil Rights Division.

20 COMMISSIONER YAKI: It should also be a  
21 finding.

22 COMMISSIONER HERIOT: And in  
23 Recommendation No. 1 we talk about the aggressive and  
24 proactive role that they've had in preventing voting  
25 rights violations. Put in there, comma, "including

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1 voter intimidation," comma.

2 CHAIRMAN REYNOLDS: Okay. How about this?

3 Why don't we vote on the recommendation that we have  
4 in front of us? We're going to have to go back and  
5 read those other findings into the record, and why  
6 don't we deal with voter intimidation at that time?

7 VICE CHAIR THERNSTROM: Because  
8 Commissioner Heriot is suggesting that we add  
9 something to Recommendation No. 1.

10 COMMISSIONER GAZIANO: Which we did. I  
11 don't know that we --

12 COMMISSIONER YAKI: Are we going to have a  
13 finding on it?

14 COMMISSIONER GAZIANO: I don't know that  
15 we need a separate finding. Again --

16 COMMISSIONER YAKI: Why wouldn't we have a  
17 finding on it? You give three freaking paragraphs on  
18 HAVA and let's get rid of illegal voters, not a single  
19 word about the history and current and continued  
20 practice especially against immigrant citizens, Latino  
21 voters, and African American voters and voter  
22 intimidation.

23 We at the very least as a Commission to  
24 fulfill our function should put that as a finding  
25 rather than simply bury it in one catch-all word,

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1 "voter intimidation," in the recommendations.

2 COMMISSIONER GAZIANO: Okay, and the --

3 COMMISSIONER YAKI: -- ignore our entire  
4 charter, but if you want to do that, go ahead.

5 COMMISSIONER GAZIANO: No, and in the  
6 future, Commissioner Yaki, if you really want us to  
7 consider those things, I wish you would send them to  
8 us weeks in advance like other Commissioners have. If  
9 you would have proposed a finding, it would have been  
10 easier for us to consider that and possibly accept it.

11 But if you want to work on one now, then  
12 we can consider it when we go back to the findings.

13 VICE CHAIR THERNSTROM: Well --

14 COMMISSIONER GAZIANO: I don't think it's  
15 necessary, but --

16 COMMISSIONER HERIOT: I think it's already  
17 implicit here, but we can easily --

18 CHAIRMAN REYNOLDS: Let's vote on the  
19 recommendation that we have on the table. We're going  
20 to circle back around and read certain findings into  
21 the record, and we will deal with the voter  
22 intimidation issue at that time.

23 Now, with respect to the Recommendation  
24 No. 2, Commissioner Melendez, how do you vote?

25 COMMISSIONER MELENDEZ: No.

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1 CHAIRMAN REYNOLDS: Commissioner Kirsanow.

2 (No response.)

3 CHAIRMAN REYNOLDS: Vice Chair Thernstrom.

4 VICE CHAIR THERNSTROM: Yes, on the  
5 assumption that we are going to incorporate in some  
6 way or perhaps both in the findings and in the first  
7 recommendation Commissioner Yaki's suggestion.

8 CHAIRMAN REYNOLDS: I'm a little confused.

9 Are you making this vote contingent upon what  
10 happens?

11 VICE CHAIR THERNSTROM: No. I'm just  
12 saying that that -- I am voting on the assumption,  
13 yes, on the assumption that we will do that.

14 CHAIRMAN REYNOLDS: We will take up this  
15 issue again, the voting intimidation issue.

16 VICE CHAIR THERNSTROM: Okay. So my  
17 answer is yes. All right.

18 CHAIRMAN REYNOLDS: All right.  
19 Commissioner Taylor.

20 COMMISSIONER TAYLOR: Yes.

21 CHAIRMAN REYNOLDS: Commissioner Gaziano.

22 COMMISSIONER GAZIANO: Yes.

23 CHAIRMAN REYNOLDS: Commissioner Heriot.

24 COMMISSIONER HERIOT: Yes.

25 CHAIRMAN REYNOLDS: Commissioner Yaki.

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1 Commissioner Yaki.

2 COMMISSIONER YAKI: No.

3 CHAIRMAN REYNOLDS: Okay. Commissioner  
4 Kirsanow did not participate in the vote.  
5 Commissioners Melendez and Yaki voted against the  
6 motion. The remaining Commissioners voted for it.  
7 The motion passes.

8 We're up to Recommendation No. 3. I move  
9 that "DOJ take aggressive steps to insure that all  
10 states comply with HAVA's requirements, that each  
11 state implement in a uniform and nondiscriminatory  
12 manner a single uniform, official, centralized,  
13 interactive, computerized, statewide voter  
14 registration list and with the minimum statutory  
15 requirements for that list. In keeping with both the  
16 text and the underlying purpose of that statute, DOJ  
17 should insure that the state lists be up to date and  
18 available at every polling place within the  
19 jurisdiction. At the same time, however, DOJ must be  
20 mindful that sometimes legitimate voters have been  
21 improperly removed from the rolls. So care must  
22 always be taken when attempting to remove ineligible  
23 voters from those rolls."

24 Is there a second?

25 COMMISSIONER TAYLOR: Second.

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1 CHAIRMAN REYNOLDS: Discussion?

2 VICE CHAIR THERNSTROM: Why do we have no  
3 reference to provisional voting here?

4 CHAIRMAN REYNOLDS: Vice Chair Thernstrom,  
5 would you care to expand on your statement?

6 VICE CHAIR THERNSTROM: Well, so care must  
7 be taken -- just a minute. Give me a minute here.

8 Something to the effect "and that voters  
9 who believe they have been improperly removed from the  
10 rolls have their right to cast provisional ballots."

11 CHAIRMAN REYNOLDS: Now, are you thinking  
12 of a stand alone sentence or incorporating in --

13 VICE CHAIR THERNSTROM: Well, I think it  
14 became a little complicated. So a stand alone  
15 sentence here. "Voters who believe that they have  
16 been improperly removed from the rolls" -- "it is  
17 important to enforce the right of voters to  
18 provisional ballots when voters believe that they  
19 have" --

20 COMMISSIONER HERIOT: That kind of has the  
21 feel to it as if people are not being allowed to cast  
22 provisional ballots, and we don't have testimony to  
23 that effect.

24 VICE CHAIR THERNSTROM: Well, I mean, I  
25 think that Commissioner Yaki is right that the

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1 provision of -- that the availability of provisional  
2 ballots has varied from jurisdiction to jurisdiction.

3 COMMISSIONER HERIOT: I don't know that  
4 that's in the record.

5 VICE CHAIR THERNSTROM: Commissioner Yaki,  
6 was that in the record?

7 COMMISSIONER YAKI: I don't know.

8 VICE CHAIR THERNSTROM: I don't remember.

9 CHAIRMAN REYNOLDS: So, Abby, please --

10 COMMISSIONER HERIOT: We make mention of  
11 provisional ballots.

12 CHAIRMAN REYNOLDS: -- provide us with a  
13 sentence or two.

14 VICE CHAIR THERNSTROM: Well, why don't  
15 you go on and I will work on it for a minute?

16 CHAIRMAN REYNOLDS: Okay. Any other  
17 comments?

18 (No response.)

19 CHAIRMAN REYNOLDS: All right. Vice Chair  
20 Thernstrom, we will wait until you finish with your  
21 wordsmithing.

22 VICE CHAIR THERNSTROM: Okay.

23 (Pause in proceedings.)

24 VICE CHAIR THERNSTROM: Well, okay.  
25 "Those voters who believe they have been improperly

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1 removed from the rolls are entitled to provisional  
2 ballots."

3 CHAIRMAN REYNOLDS: Okay. With that  
4 friendly amendment, I call the question. Commissioner  
5 Melendez.

6 COMMISSIONER MELENDEZ: No.

7 CHAIRMAN REYNOLDS: I'm sorry,  
8 Commissioner Melendez?

9 COMMISSIONER MELENDEZ: No.

10 CHAIRMAN REYNOLDS: Vice Chair Kirsanow --  
11 Vice Chair Thernstrom.

12 VICE CHAIR THERNSTROM: Yes.

13 CHAIRMAN REYNOLDS: Commissioner Taylor.

14 VICE CHAIR THERNSTROM: He's left the  
15 room.

16 CHAIRMAN REYNOLDS: Commissioner Gaziano.

17 COMMISSIONER GAZIANO: Yes.

18 CHAIRMAN REYNOLDS: Commissioner Heriot.

19 COMMISSIONER HERIOT: Yes.

20 CHAIRMAN REYNOLDS: Commissioner Yaki.

21 COMMISSIONER YAKI: Nope.

22 CHAIRMAN REYNOLDS: Okay. Commissioners  
23 Melendez and Yaki voted against the motion.  
24 Commissioners Kirsanow and Taylor did not participate  
25 in the vote. The remaining Commissioners voted in

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1 the affirmative. The motion passes.

2 COMMISSIONER HERIOT: Commissioner Taylor  
3 is here now.

4 COMMISSIONER TAYLOR: I want to put my  
5 vote on the record. I just want to make sure that it  
6 hasn't changed substantially from what was written  
7 here. I apologize.

8 COMMISSIONER HERIOT: Abby added --

9 COMMISSIONER GAZIANO: Abby added one  
10 sentence that said -- a very simple sentence. Would  
11 you read it?

12 VICE CHAIR THERNSTROM: "Those voters who  
13 believe they have been improperly removed from the  
14 rolls are entitled to provisional ballots."

15 COMMISSIONER GAZIANO: So with that  
16 amendment?

17 COMMISSIONER TAYLOR: With that amendment,  
18 Taylor votes aye.

19 CHAIRMAN REYNOLDS: Okay. Commissioners  
20 Melendez and Yaki voted against the motion.  
21 Commissioner Kirsanow did not participate in the vote.

22 The remaining Commissioners voted in the affirmative.

23 The motion passes.

24 Okay. I move that we approve  
25 Recommendation 4, which reads, "It is unacceptable

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1 that men and women of our Armed Services who are  
2 making sacrifices for the country that will never be  
3 adequately repaid are sometimes denied the opportunity  
4 to vote in federal elections. While primary  
5 responsibility for ensuring that opportunity lies with  
6 the states, the Secretary of Defense, and the  
7 Department of Defense, DOJ through the Voting Section  
8 should be vigilant in its enforcement of UOCAVA" --

9 VICE CHAIR THERNSTROM: UOCAVA.

10 CHAIRMAN REYNOLDS: I'm sorry?

11 VICE CHAIR THERNSTROM: UOCAVA.

12 CHAIRMAN REYNOLDS: Okay. UOCAVA. "We  
13 recommend that the Voting Section be especially  
14 mindful of the need for advanced preparation and speed  
15 whenever paper ballots which must be moved great  
16 distances in a timely manner are used."

17 Is there a second?

18 COMMISSIONER TAYLOR: Second.

19 CHAIRMAN REYNOLDS: Discussion?

20 COMMISSIONER GAZIANO: I'd just like to  
21 speak to one point relating to the finding. The  
22 testimony as I recall was that some jurisdictions, you  
23 know, under court order still kind of dragged their  
24 feet. Other jurisdictions, you know, provided for  
25 FedEx returns, which made a huge difference.

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1           There is public returns in the most recent  
2 New York special election, but only 20 percent of the  
3 military service personnel who requested ballots,  
4 their ballots were counted, and 20 percent is a pretty  
5 shameful return rate for that jurisdiction or for any  
6 jurisdiction in that they did have warning that they  
7 needed to do a better job.

8           So I'm just in support of this  
9 recommendation, but I just want to sort of supplement  
10 the record that the testimony was that jurisdictions  
11 could do things, could do appropriate things to comply  
12 with this statute and that a lot of jurisdictions have  
13 to be taken kicking and screaming in court to take  
14 this seriously.

15           VICE CHAIR THERNSTROM: And I would also  
16 like to add something to this, but if this is  
17 factually incorrect, somebody should tell me. We  
18 refer here, while primary responsibility for ensuring  
19 that opportunity lies with the states, the Secretary  
20 of Defense, the Department of Defense, DOJ, the Voting  
21 Section, I believe that in many cases the problem lies  
22 with the county or the political subdivision that  
23 actually conducts the elections and it is not a  
24 statewide problem. It is a problem of a particular  
25 county.

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1 COMMISSIONER GAZIANO: As I under --

2 COMMISSIONER HERIOT: As I use the word  
3 "state," I usually mean the state broadly, including  
4 local jurisdictions. So we can emphasize --

5 VICE CHAIR THERNSTROM: Well, I think it  
6 should say "and its political subdivisions."

7 COMMISSIONER GAZIANO: That's fine.

8 COMMISSIONER HERIOT: That's fine.

9 COMMISSIONER GAZIANO: As I understand it,  
10 the federal government usually makes responsible the  
11 states and their subdivisions and then leaves it up to  
12 the states to figure out how they're going to.

13 VICE CHAIR THERNSTROM: Yes, the states  
14 don't do it, and it is the local authorities that are  
15 often the problem.

16 COMMISSIONER HERIOT: Okay. So I would  
17 consider it a friendly amendment to add after the word  
18 "states" "their political subdivisions."

19 VICE CHAIR THERNSTROM: Yes.

20 COMMISSIONER HERIOT: "The states, their  
21 political subdivisions, the Secretary of Defense" --

22 VICE CHAIR THERNSTROM: Yes.

23 COMMISSIONER HERIOT: -- "and the  
24 Department of Defense."

25 VICE CHAIR THERNSTROM: Thank you.

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1 CHAIRMAN REYNOLDS: Okay. Other comments?

2 (No response.)

3 CHAIRMAN REYNOLDS: Commissioner Melendez,  
4 how do you vote?

5 COMMISSIONER MELENDEZ: No.

6 CHAIRMAN REYNOLDS: Commissioner Kirsanow,  
7 have you returned?

8 COMMISSIONER KIRSANOW: I have. I vote  
9 yes.

10 CHAIRMAN REYNOLDS: Okay. Vice Chair  
11 Thernstrom.

12 VICE CHAIR THERNSTROM: Yes.

13 CHAIRMAN REYNOLDS: Commissioner Taylor.

14 COMMISSIONER TAYLOR: Yes.

15 CHAIRMAN REYNOLDS: Commissioner Gaziano.

16 COMMISSIONER GAZIANO: Yes.

17 CHAIRMAN REYNOLDS: Commissioner Gaziano.

18 COMMISSIONER GAZIANO: Yes.

19 CHAIRMAN REYNOLDS: Commissioner Heriot.

20 COMMISSIONER GAZIANO: Twice.

21 COMMISSIONER HERIOT: Yes.

22 CHAIRMAN REYNOLDS: Commissioner Yaki.

23 COMMISSIONER YAKI: Yes.

24 VICE CHAIR THERNSTROM: We've got a  
25 fraudulent vote here.

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1 (Laughter.)

2 CHAIRMAN REYNOLDS: Commissioner Yaki?

3 COMMISSIONER GAZIANO: I just want my vote  
4 to be counted.

5 CHAIRMAN REYNOLDS: I'm sorry. Was that a  
6 vote in the affirmative?

7 COMMISSIONER GAZIANO: It was. You just  
8 called on me twice, and they're --

9 COMMISSIONER HERIOT: It was two votes.

10 COMMISSIONER GAZIANO: -- objecting that  
11 you called on me twice. As long as my vote counts  
12 once, that's fine.

13 I'm sorry and -- okay. What's the final  
14 tally?

15 CHAIRMAN REYNOLDS: Okay. If I heard  
16 Commissioner Yaki right, we have one vote against the  
17 motion. That's Commissioner Melendez. The remaining  
18 Commissioners vote in the affirmative. The motion  
19 passes.

20 Okay. I move that we approve  
21 Recommendation 5, which reads, "We believe that states  
22 that currently, one, register persons who fail to  
23 answer the citizenship question on voter registration  
24 applications made pursuant to NVRA and, two, fail to  
25 keep a separate registration list for such persons and

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1 provide them with non-federal ballots for voting  
2 purposes are out of compliance with federal law. We,  
3 therefore, recommend that the Voting Sections take  
4 appropriate enforcement action in order to prevent the  
5 possibility of non-citizens voting in federal  
6 elections. If necessary the Voting Section should  
7 seek a court order requiring that state officials  
8 either reject such applications from persons who fail  
9 to state that they are American citizens (after being  
10 contacted and provided a second chance to do so as  
11 provided by law) or keep a separate list of such  
12 registrants and provide voters on that list only with  
13 non-federal ballots."

14 Is there a second?

15 VICE CHAIR THERNSTROM: Second.

16 CHAIRMAN REYNOLDS: Discussion?

17 COMMISSIONER TAYLOR: This is Commissioner  
18 Taylor. I'm not an expert in this area, and so I  
19 don't feel perhaps as comfortable as others may feel  
20 in stating that something appears to be out of  
21 compliance with federal law. I would prefer to have  
22 some language that is softer than that because I don't  
23 feel comfortable making that declarative statement as  
24 far as something out of compliance.

25 I could be persuaded otherwise, but I

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1 would prefer to have language that causes us concern  
2 and reflects the problem, something to that extent. I  
3 think it's a problem. I'm just not sure in terms of  
4 making that declaration.

5 CHAIRMAN REYNOLDS: Okay. Do you have any  
6 compromise language in mind?

7 COMMISSIONER GAZIANO: It raises serious  
8 concerns under federal law?

9 COMMISSIONER TAYLOR: Yes, raises concerns  
10 or we strongly encourage states to do this. I mean  
11 one and two I like, and I want states to do it.

12 COMMISSIONER HERIOT: But we're  
13 recommending that DOJ actually undertake an  
14 enforcement action.

15 COMMISSIONER TAYLOR: Right, and I'll go  
16 to that last sentence in a minute, but the first --  
17 well, let me go to the last sentence because we jump  
18 right to a court order, and there are many things  
19 short of a court order. I know it says "if  
20 necessary," but when we put the court order in the  
21 language it has suggested that that is a preferred  
22 tool of enforcement.

23 COMMISSIONER HERIOT: It's a last resort,  
24 if necessary.

25 COMMISSIONER TAYLOR: But putting it in,

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1 expressly identifying it suggests that it's a primary  
2 tool from my perspective at least, and I just want to  
3 see it done, and I don't have to suggest how they do  
4 it by way of court or otherwise. I just want to see  
5 it done.

6 CHAIRMAN REYNOLDS: Okay. Well, how about  
7 this? "If necessary, the Voting Section should seek  
8 an appropriate remedy, including a court order  
9 requiring," yaddy-yaddy-yada.

10 COMMISSIONER TAYLOR: Yes, something like  
11 that, right, right. Something to that effect.

12 VICE CHAIR THERNSTROM: Why not just cut  
13 off all the language starting with "if necessary"?  
14 "We, therefore, recommend the Voting Section take  
15 appropriate enforcement action in order to prevent the  
16 possibility of non-citizens voting in federal  
17 elections," period, stop, end.

18 CHAIRMAN REYNOLDS: And everything else  
19 after that is deleted?

20 COMMISSIONER GAZIANO: I prefer a little  
21 bit of specificity. What is concerning you about the  
22 specificity of what we want them to do since it does  
23 track the language of the statute pretty closely, what  
24 they are required to do. It's almost restating what  
25 the statute requires.

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1 VICE CHAIR THERNSTROM: Well, I was just  
2 trying to solve that problem that Commissioner Taylor  
3 had.

4 COMMISSIONER GAZIANO: I thought we had  
5 with the Chairman's --

6 COMMISSIONER TAYLOR: With the Chairman's  
7 suggestion --

8 COMMISSIONER GAZIANO: -- suggestion.  
9 That works for me.

10 COMMISSIONER TAYLOR: I'd just like to be  
11 careful in these recommendations that people don't  
12 take from it that we view it as the preferred method  
13 of enforcement.

14 COMMISSIONER GAZIANO: I think that sounds  
15 good to me.

16 VICE CHAIR THERNSTROM: All right, okay.

17 COMMISSIONER TAYLOR: Fine. That's all.

18 VICE CHAIR THERNSTROM: All right.

19 COMMISSIONER HERIOT: So could somebody  
20 read that to me again?

21 COMMISSIONER GAZIANO: The voting -- Mr.  
22 Chairman, do you have that?

23 CHAIRMAN REYNOLDS: Oh.

24 COMMISSIONER GAZIANO: The Voting Section  
25 -- let me see if I have your language. "The Voting

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1 Section should seek an appropriate remedy," comma,  
2 "including a court order," comma --

3 CHAIRMAN REYNOLDS: Right.

4 COMMISSIONER GAZIANO: -- and then the  
5 rest.

6 CHAIRMAN REYNOLDS: Yes, that was my  
7 formulation.

8 COMMISSIONER HERIOT: Okay. That's fine.

9 CHAIRMAN REYNOLDS: Offered as a friendly  
10 amendment.

11 COMMISSIONER GAZIANO: Accepted, I take  
12 it.

13 CHAIRMAN REYNOLDS: Okay. Any other  
14 questions or comments?

15 (No response.)

16 CHAIRMAN REYNOLDS: Commissioner Melendez,  
17 how do you vote?

18 VICE CHAIR THERNSTROM: Wait a minute. I  
19 have. "Including a court order," "possibly including  
20 a court order" or "including a court order when  
21 necessary," or something. I'm just softening it  
22 slightly.

23 You know, this sounds like --

24 COMMISSIONER HERIOT: Well, it already  
25 begins with "if necessary." That's why I was --

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1 VICE CHAIR THERNSTROM: Oh, I see.

2 COMMISSIONER HERIOT: -- this was not.  
3 That was my way of trying to do what --

4 VICE CHAIR THERNSTROM: I get it, I get  
5 it. I'm sorry. I missed the "if necessary."

6 COMMISSIONER YAKI: I have a question.

7 VICE CHAIR THERNSTROM: I apologize.

8 COMMISSIONER YAKI: Mr. Chair.

9 CHAIRMAN REYNOLDS: Yes. Commissioner  
10 Yaki.

11 COMMISSIONER YAKI: Was there any evidence  
12 produced at the hearing that this has actually  
13 occurred?

14 COMMISSIONER GAZIANO: Yes.

15 COMMISSIONER HERIOT: Yes.

16 COMMISSIONER GAZIANO: There was some  
17 testimony from Maryland, I believe.

18 COMMISSIONER HERIOT: -- states, yes.

19 COMMISSIONER GAZIANO: Maryland, there was  
20 incidence, incidents from --

21 COMMISSIONER HERIOT: Maryland was a  
22 different issue.

23 COMMISSIONER YAKI: And how widespread was  
24 it? Thousands?

25 COMMISSIONER HERIOT: The testimony was

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1 that it was occurring in Ohio, South Dakota, and Iowa.

2 COMMISSIONER YAKI: Testimony by whom?

3 COMMISSIONER HERIOT: I don't recall. I  
4 mean, this is basically the mirror image of Finding  
5 No. 6.

6 CHAIRMAN REYNOLDS: Okay. Commissioner  
7 Melendez, how do you vote?

8 COMMISSIONER MELENDEZ: No.

9 CHAIRMAN REYNOLDS: Commissioner Kirsanow.

10 COMMISSIONER KIRSANOW: Yes, and I have to  
11 jump off again for five minutes, but I'll be back.

12 CHAIRMAN REYNOLDS: Okay. Vice Chair  
13 Thernstrom.

14 VICE CHAIR THERNSTROM: Yes.

15 CHAIRMAN REYNOLDS: Commissioner Taylor.

16 COMMISSIONER TAYLOR: Yes. Did we fix the  
17 first sentence, too, by the way?

18 COMMISSIONER GAZIANO: I'm not sure. What  
19 was your concern again?

20 CHAIRMAN REYNOLDS: The first sentence?

21 COMMISSIONER GAZIANO: Let's go back.

22 COMMISSIONER TAYLOR: Yes, I think we  
23 agreed upon it. It was just that --

24 COMMISSIONER HERIOT: What was it then?

25 COMMISSIONER TAYLOR: The concern that

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1 raises serious questions with respect to compliance  
2 with federal law, something to that --

3 COMMISSIONER GAZIANO: Yes, the last  
4 phrase, I think, maybe was "failed to keep a separate  
5 registration list for such persons and provide them  
6 with non-federal ballots for voting purposes raises  
7 serious concerns under federal law."

8 COMMISSIONER HERIOT: That's not  
9 grammatical, is it?

10 CHAIRMAN REYNOLDS: Okay.

11 VICE CHAIR THERNSTROM: It would have to  
12 be "the failure."

13 COMMISSIONER HERIOT: States raise, states  
14 raise.

15 COMMISSIONER TAYLOR: Or "states which  
16 raises," no.

17 COMMISSIONER GAZIANO: Okay, okay.

18 COMMISSIONER HERIOT: States are  
19 currently --

20 CHAIRMAN REYNOLDS: That was a friendly  
21 amendment. It's my understanding that that amended,  
22 that that friendly amendment was acceptable to  
23 Commissioner Heriot.

24 COMMISSIONER HERIOT: Yes, but I'm still  
25 working on it here.

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1 CHAIRMAN REYNOLDS: Oh, okay.

2 COMMISSIONER HERIOT: States currently do  
3 one and two. Raise, what was the rest of it?

4 COMMISSIONER GAZIANO: Serious.

5 COMMISSIONER TAYLOR: Serious.

6 COMMISSIONER HERIOT: All right.

7 COMMISSIONER GAZIANO: Concerns under  
8 federal law.

9 COMMISSIONER TAYLOR: Right.

10 COMMISSIONER HERIOT: Concerns under  
11 federal law. Okay.

12 VICE CHAIR THERNSTROM: Good.

13 COMMISSIONER HERIOT: We need to re-vote  
14 then.

15 CHAIRMAN REYNOLDS: Okay, and that  
16 presents a problem since -- well, okay. Commissioner  
17 Melendez, how do you vote?

18 COMMISSIONER MELENDEZ: No.

19 CHAIRMAN REYNOLDS: Commissioner Kirsanow,  
20 are you still on the line?

21 (No response.)

22 COMMISSIONER GAZIANO: We'll give him  
23 another chance maybe.

24 CHAIRMAN REYNOLDS: Okay. Vice Chair  
25 Thernstrom.

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1 VICE CHAIR THERNSTROM: Yes.

2 CHAIRMAN REYNOLDS: Commissioner Taylor.

3 COMMISSIONER TAYLOR: Yes.

4 CHAIRMAN REYNOLDS: Commissioner Gaziano.

5 COMMISSIONER GAZIANO: Yes.

6 CHAIRMAN REYNOLDS: Commissioner Heriot.

7 COMMISSIONER HERIOT: Yes.

8 CHAIRMAN REYNOLDS: Commissioner Yaki.

9 COMMISSIONER YAKI: Oh, no.

10 CHAIRMAN REYNOLDS: Oh, no. Okay.

11 Commissioners Melendez and Yaki voted against the  
12 motion. Commissioner Kirsanow did not participate in  
13 the vote. The remaining Commissioners voted for it.  
14 The recommendation passes.

15 At this point we are going to circle back,  
16 and I'm going to read the certain findings into the  
17 record.

18 Finding No. 1. "Two sections at the  
19 Department of Justice play an important role in  
20 enforcing voting rights of U.S. citizens.

21 "a. The Voting Rights Section of the  
22 Civil Rights Division enforces such statutes as the  
23 Voting Rights Act, the Help America Vote Act, the  
24 Uniformed and Overseas Citizens Absentee Voting Act,  
25 and the National Voter Registration Act. The Voting

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1 Section plays a proactive role in preventing  
2 violations of these statutes and is responsible for  
3 Election Day programs run by DOJ. The Voting Section  
4 has approximately 85 attorneys and support staff.

5 "b. The Public Integrity Section is part  
6 of the Criminal Division and is responsible for  
7 prosecuting those who corrupt elections and  
8 governmental processes and addresses such issues as  
9 ballot fraud, vote buying, ballot stuffing, voting by  
10 non-citizens, multiple voting by individuals, bribery  
11 of officials, extortion by officials, and violations  
12 of campaign finance laws. It is responsible for  
13 working in a consultative capacity with local U.S.  
14 Attorneys' offices across the country to prosecute  
15 such crimes. The Public Integrity Section has  
16 approximately 29 trial attorneys and 13 support  
17 staff."

18 Okay. Finding No. 2.

19 COMMISSIONER HERIOT: Mr. Chairman.

20 CHAIRMAN REYNOLDS: I'm sorry?

21 COMMISSIONER HERIOT: Mr. Chairman, here's  
22 where we could include voter intimidation in the  
23 findings, is in Finding No. 2.

24 CHAIRMAN REYNOLDS: Okay. Well, let me  
25 read it, and then we can start the discussion.

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1 "Since the election of 2000, the Voting  
2 Section has greatly expanded the number of federal  
3 observers from the Office of Personnel Management and  
4 DOJ staff members who are sent into the field to  
5 monitor federal elections. In the year 2000, the  
6 Voting Section sent 640 federal observers and 110 DOJ  
7 staff members to serve as monitors. In the year 2004,  
8 however, the numbers were increased to 1,463 federal  
9 observers and 533 DOJ staff members. In 2006, a  
10 record was set for midterm elections with over 1,500  
11 federal observers and DOJ staff members deployed. At  
12 the time of our briefing, plans were being made to  
13 staff a comprehensive program to ensure ballot access  
14 in the historic 2008 election."

15 Okay. Voter intimidation. Is this a good  
16 spot for it?

17 COMMISSIONER HERIOT: Yes. What I would  
18 suggest is at the end of the first sentence there  
19 after the words "federal elections" add "for purposes  
20 that include the prevention of voter intimidation."

21 COMMISSIONER GAZIANO: "And voter fraud."  
22 Why don't we include both?

23 COMMISSIONER HERIOT: Voter fraud is  
24 public integrity section.

25 COMMISSIONER GAZIANO: Okay. I thought

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1 they both had a role in -- I thought Voting Section  
2 also --

3 COMMISSIONER HERIOT: Yes, I can't say for  
4 sure that -- you know, let's just put it this way.  
5 "For purposes that include the prevention of voter  
6 intimidation."

7 COMMISSIONER GAZIANO: It's not wrong. I  
8 just think --

9 COMMISSIONER HERIOT: I don't think it's  
10 wrong either. I think they also do voter fraud. If  
11 they see it, I mean, they would then report it to the  
12 Public Integrity Section, I assume.

13 Do you recall want voter fraud in there?

14 COMMISSIONER GAZIANO: Unless -- you know,  
15 it's the same observers who report both.

16 COMMISSIONER HERIOT: Okay, okay. So  
17 let's do that. Added at the end there, "for purposes  
18 that include the prevention of voter intimidation and  
19 voter fraud."

20 CHAIRMAN REYNOLDS: Okay. Any other  
21 comments? I mean, is that an acceptable way to fold  
22 in voter intimidation?

23 COMMISSIONER HERIOT: I think we have to  
24 vote on it.

25 CHAIRMAN REYNOLDS: Well, I just want to

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1 make sure that, I mean, if there are other  
2 suggestions. I just want to give people an  
3 opportunity to voice their opinions.

4 Okay. We're going to --

5 COMMISSIONER YAKI: I think it's highly  
6 inadequate, but I do not have the record in front of  
7 me, and we'll be voting now.

8 CHAIRMAN REYNOLDS: Okay. AT this point  
9 we will vote on Finding No. 2, as amended.  
10 Commissioner Melendez, how do you vote?

11 COMMISSIONER MELENDEZ: No.

12 CHAIRMAN REYNOLDS: Commissioner Kirsanow.

13 COMMISSIONER KIRSANOW: Yes.

14 CHAIRMAN REYNOLDS: Commissioner  
15 Thernstrom, Vice Chair Thernstrom.

16 COMMISSIONER GAZIANO: She has stepped out  
17 of the room.

18 CHAIRMAN REYNOLDS: Commissioner Taylor.

19 COMMISSIONER TAYLOR: Yes.

20 CHAIRMAN REYNOLDS: Commissioner Gaziano.

21 COMMISSIONER GAZIANO: Yes.

22 CHAIRMAN REYNOLDS: Commissioner Heriot.

23 COMMISSIONER HERIOT: Yes.

24 CHAIRMAN REYNOLDS: Commissioner Yaki.

25 COMMISSIONER YAKI: Nope.

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1 CHAIRMAN REYNOLDS: Okay. Commissioners  
2 Melendez and Yaki voted against the motion. Vice  
3 Chair Thernstrom did not participate in the vote. The  
4 remaining Commissioners voted for this. So the motion  
5 passes.

6 Okay. We're up to Finding No. 3. Okay.  
7 Finding No. 3 reads as follows: "from 2001 to 2008,  
8 the Voting Section vigorously enforced the statutes  
9 that are entrusted to its care. Indeed, the 18  
10 lawsuits filed in 2006 were double the average number  
11 of lawsuits filed annually in the previous 30 years.  
12 Nine of the 11 cases were brought by DOJ under Section  
13 208, which request that a voter who needs assistance  
14 to vote 'be given assistance by a person of the  
15 voter's choice,' were filed by the Voting Section  
16 between 2001 and 2008. Similarly, during this period,  
17 27 cases were filed by the Voting Section under  
18 Section 203, which requires certain jurisdictions to  
19 provide election materials in the language of the  
20 applicable language minority group residing there --  
21 more cases than in all the years since Section 203's  
22 passage in 1975 combined. The Voting Section also  
23 filed more lawsuits to enforce the National Voter  
24 Registration Act of 1993 between 2001 and 2008 than it  
25 had in the previous eight years."

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1 COMMISSIONER YAKI: You're just reading  
2 these, right?

3 CHAIRMAN REYNOLDS: Yes.

4 Okay. Does anyone remember at which point  
5 I started reading in --

6 COMMISSIONER HERIOT: Yes, you've done it  
7 now.

8 COMMISSIONER GAZIANO: You started at  
9 number four. So you're caught up.

10 COMMISSIONER HERIOT: You're finished.  
11 You're finished. What we need to do is skip back over  
12 to Recommendation No. 1 to include voting  
13 intimidation.

14 CHAIRMAN REYNOLDS: I thought we -- I  
15 thought we -- oh, oh.

16 COMMISSIONER HERIOT: We've just got to  
17 add three words here, I think.

18 CHAIRMAN REYNOLDS: Okay.

19 COMMISSIONER GAZIANO: Correct.

20 COMMISSIONER HERIOT: My recommendation  
21 would be to add after the words "voting rights  
22 violations" in the first sentence, put in, comma,  
23 "including voter intimidation," comma.

24 CHAIRMAN REYNOLDS: Okay. With that  
25 friendly amendment, Commissioner Melendez, how do you

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1 vote?

2 COMMISSIONER MELENDEZ: No.

3 CHAIRMAN REYNOLDS: Commissioner Kirsanow.

4 COMMISSIONER KIRSANOW: Yes.

5 CHAIRMAN REYNOLDS: Commissioner  
6 Thernstrom.

7 VICE CHAIR THERNSTROM: To tell you the  
8 truth, I was out of the room just now. Get back to  
9 me. I will look at a scribbled version here.

10 CHAIRMAN REYNOLDS: Okay. I just want to  
11 remind you that you voted for it the first time  
12 around. Right now we're just voting on a friendly  
13 amendment.

14 Okay. Commissioner Taylor.

15 COMMISSIONER TAYLOR: Abstain.

16 CHAIRMAN REYNOLDS: Commissioner Gaziano.

17 COMMISSIONER GAZIANO: Yes.

18 CHAIRMAN REYNOLDS: Commissioner Heriot.

19 COMMISSIONER HERIOT: Yes.

20 CHAIRMAN REYNOLDS: Commissioner Yaki.

21 COMMISSIONER YAKI: No, no, no, no, no.

22 COMMISSIONER HERIOT: You only get one  
23 vote there.

24 CHAIRMAN REYNOLDS: Okay. Vice Chair  
25 Thernstrom, let me know when you're ready.

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1 VICE CHAIR THERNSTROM: I abstained the  
2 first time and the question is does this solve the  
3 problem.

4 CHAIRMAN REYNOLDS: No, actually you voted  
5 in favor of it the first time.

6 VICE CHAIR THERNSTROM: No, I didn't.

7 CHAIRMAN REYNOLDS: You didn't. Okay.

8 VICE CHAIR THERNSTROM: No.

9 COMMISSIONER HERIOT: But the only issue  
10 here is whether or not it is improved by adding the  
11 new language.

12 VICE CHAIR THERNSTROM: Right.

13 COMMISSIONER HERIOT: Including voter  
14 intimidation. You can vote --

15 COMMISSIONER HERIOT: I vote yes on it.

16 CHAIRMAN REYNOLDS: Okay. Commissioners  
17 Melendez and Yaki voted against the motion.  
18 Commissioner Taylor abstained. The remaining  
19 Commissioners voted for it. The motion passes.

20 Okay. If someone wants to remind me where  
21 we are.

22 COMMISSIONER HERIOT: We're done.

23 COMMISSIONER YAKI: You're on the fifth  
24 floor. No, you're in Kansas City.

25 CHAIRMAN REYNOLDS: Okay. Fourth bullet.

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1       Okay.

2                   VICE CHAIR THERNSTROM:   Mr. Chairman, was  
3 there something I wanted -- I'm sorry. I've lost  
4 track a little bit here -- added in the way of a  
5 reference to provisional ballots that --

6                   COMMISSIONER HERIOT: We did that.

7                   COMMISSIONER GAZIANO:    We added.    We  
8 accepted it.

9                   VICE CHAIR THERNSTROM: We have done it?

10                  COMMISSIONER GAZIANO: Accepted, approved.

11                  VICE CHAIR THERNSTROM: It doesn't need to  
12 go anywhere else? Okay.

13                  I want to make a general statement here.  
14 There are a number of issues that Commissioner Yaki  
15 brought up this morning that if I had had the chance  
16 to see them in a timely manner beforehand, I would  
17 have fiddled with language and tried because I thought  
18 that they were good points and tried to come up with  
19 some kind of suggestions, and I would hope he would,  
20 too.

21                  The difficulty is I can't listen at the  
22 very last minute to really what were substantial  
23 objections and incorporate his concerns into findings  
24 and recommendations that have been already formulated.

25       And, you know, it's a problem with this Commission

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1 altogether that we get material too late to properly  
2 evaluate, but it has been screamingly evident today  
3 when a Commissioner comes in with very serious and  
4 sound points, and we cannot properly evaluate them  
5 because we haven't seen them beforehand.

6 CHAIRMAN REYNOLDS: I want to encourage  
7 all Commissioners to the extent they have friendly  
8 amendments or objections, if you put --

9 COMMISSIONER YAKI: None of mine are going  
10 to be friendly.

11 VICE CHAIR THERNSTROM: Friendly,  
12 unfriendly, whatever. I mean, you know, this is a  
13 process that hasn't worked for me this morning simply  
14 because I'm hearing stuff for the first time that has  
15 validity.

16 CHAIRMAN REYNOLDS: Right. I just want to  
17 encourage everyone to circulate their friendly  
18 amendments, their objections, their proposed  
19 substitutions ahead of time so that we can have an  
20 opportunity to think about it and in some cases to,  
21 you know, have some discussions so that we're better  
22 prepared to deal with these issues at the meeting.

23 COMMISSIONER TAYLOR: Mr. Chair.

24 CHAIRMAN REYNOLDS: Yes.

25 COMMISSIONER TAYLOR: A final comment, if

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1 I may, that the perfect is always the enemy of the  
2 good, and I think the changes we have made, while they  
3 may not have elaborated in the detail that  
4 Commissioner Yaki may have wanted on issues like voter  
5 intimidation, I think adding the language has improved  
6 our product, made it more complete, and I think it's a  
7 good process. Again, it may not be perfect, but I  
8 think it's good.

9 VICE CHAIR THERNSTROM: But you would not  
10 disagree with me that seeing suggestions beforehand  
11 would help.

12 COMMISSIONER YAKI: The major point of the  
13 hearing was divided into two. One-half of it was  
14 completely on voter intimidation. The fact that the  
15 staff recommendations had nothing about it is to me  
16 abysmal.

17 CHAIRMAN REYNOLDS: But we understand  
18 that, Commissioner Yaki. We're just asking that you  
19 raise your concerns sooner. Give us an opportunity  
20 to --

21 COMMISSIONER YAKI: But how can you miss  
22 the entire half of a hearing. That to me is -- we  
23 have --

24 CHAIRMAN REYNOLDS: Commissioner Yaki, we  
25 do have the ability to. I mean, we must evaluate the

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1 credibility of the witnesses, and there will be  
2 situations where we believe that one side was  
3 demonstrably put on a better case than the other. But  
4 the bottom line is --

5 COMMISSIONER YAKI: So the fact that our  
6 findings and recommendations are based in large part  
7 on the testimony of Hans Spakovsky is supposed to make  
8 us feel better?

9 COMMISSIONER GAZIANO: I disagree with  
10 that characterization.

11 CHAIRMAN REYNOLDS: Yes, but, Commissioner  
12 Yaki, let's stay focused. Right now we're just trying  
13 to improve our internal processes.

14 COMMISSIONER YAKI: Well, when internal  
15 processes ignore half of an entire hearing --

16 CHAIRMAN REYNOLDS: Commissioner Yaki, do  
17 you believe --

18 COMMISSIONER YAKI: --it's not something  
19 that is going to be --

20 CHAIRMAN REYNOLDS: -- that it is a good  
21 idea for all Commissioners to share their concerns  
22 beforehand so that we can improve the decision making  
23 process at meetings?

24 VICE CHAIR THERNSTROM: Yes, I mean, if I  
25 had heard a lot of what you said this morning

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1       beforehand, I would have stared at it very carefully,  
2       thought about what we might do with it, thought about  
3       how we might meet your concerns. I mean, I don't want  
4       to run roughshod over any Commissioners on this body.

5       I don't care whether they have a D, and R, or an I  
6       label after their names, and so my request is that you  
7       communicate such concerns giving us sufficient time to  
8       think about them. That's all. It's a very simple  
9       point.

10                COMMISSIONER HERIOT: I've just got one  
11       clarification here. At the DOJ briefing, there was  
12       not one panel on voter fraud and one on voter  
13       intimidation. That was the previous briefing that we  
14       had --

15                COMMISSIONER GAZIANO: Correct.

16                COMMISSIONER HERIOT: -- that was done the  
17       previous year.

18                COMMISSIONER GAZIANO: Which we had a lot  
19       more findings and recommendations --

20                COMMISSIONER HERIOT: Yes, yes.

21                COMMISSIONER GAZIANO: -- on voter  
22       intimidation in --

23                COMMISSIONER HERIOT: So we're getting two  
24       different briefings mixed up here. This was the  
25       briefing on DOJ --

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1 COMMISSIONER YAKI: No, I'm not --

2 COMMISSIONER HERIOT: -- performance.

3 COMMISSIONER YAKI: -- Commissioner  
4 Heriot. When we had the panel with DOJ, the present  
5 DOJ, not the former DOJ officials there, I spent a  
6 fair amount of time and, in fact, was sort of asked to  
7 move it along on questions involving voter  
8 intimidation, the --

9 COMMISSIONER HERIOT: Yes, but that was  
10 not the nature of the panel. We had a governmental  
11 officer panel and we had another panel.

12 COMMISSIONER YAKI: -- which can of  
13 training was given to them, the adequacy, how they  
14 were preparing, what were the factors involved.

15 CHAIRMAN REYNOLDS: This is so --

16 COMMISSIONER YAKI: We had a fair -- we  
17 had a very large amount of testimony on it, and the  
18 fact that zipo appeared in the summary and findings  
19 to me is not something that I should be responsible  
20 for every single time because this is not limited to  
21 this particular report. It happens --

22 CHAIRMAN REYNOLDS: Commissioner Yaki.

23 COMMISSIONER YAKI: -- time and time and  
24 time again.

25 CHAIRMAN REYNOLDS: It is a simple request

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1 to all Commissioners. Each individual Commissioner  
2 can decide whether they will abide by, will respond to  
3 the request or not. We will have a more productive  
4 meeting if these concerns are raised beforehand.  
5 That's the only point that's being put on the table.

6 COMMISSIONER YAKI: The only time in which  
7 I'm able to raise points in the public record about  
8 the deficiencies of this process is at the public  
9 record. So I will reserve my right to bring it up  
10 when and where I choose.

11 COMMISSIONER HERIOT: All right.

12 CHAIRMAN REYNOLDS: No one has suggested  
13 that you not bring it up or that you alter when you  
14 bring it up. The only thing that has been put on the  
15 table -- I mean, you have raised some issues some of  
16 which have persuaded me, some of which have not. The  
17 only thing I'm saying is that the meetings will go  
18 better and you may, indeed, be in a position to  
19 persuade more people that your argument is a superior  
20 one if you give us more notice. It's a notice issue.  
21 That's all.

22 So next --

23 COMMISSIONER GAZIANO: Thank you for  
24 raising the point, Vice Chair.

25 CHAIRMAN REYNOLDS: -- can someone tell me

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1 where we are?

2 VICE CHAIR THERNSTROM: Commissioner Yaki,  
3 in my making that point it wasn't simply directed to  
4 you. It's a larger problem of this Commission.

5 CHAIRMAN REYNOLDS: Vice Chair Thernstrom,  
6 let's just let it go and move on.

7 VICE CHAIR THERNSTROM: Okay.

8 CHAIRMAN REYNOLDS: Someone tell me where  
9 we are.

10 COMMISSIONER GAZIANO: No Child Left  
11 Behind.

12 CHAIRMAN REYNOLDS: Okay.

13 **V. PROGRAM PLANNING**

14 **APPROVAL OF BRIEFING REPORT ON PROVISION OF**  
15 **SUPPLEMENTAL EDUCATIONAL SERVICES UNDER THE**  
16 **NO CHILD LEFT BEHIND ACT**

17 CHAIRMAN REYNOLDS: Based on the  
18 information offered during the January 26, 2007  
19 briefing and taking into account the changes to No  
20 Child Left Behind regulations issued by the U.S.  
21 Department of Education on October 28, 2008, staff  
22 offers for approval its draft report on supplemental  
23 educational services under No Child Left Behind Act.  
24 This report with accompanying findings and  
25 recommendations was sent to Commissioners on April

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1 9th, along with the rest of the meeting materials.

2 I move that the Commissioners approve for  
3 publication, along with any concurring and dissenting  
4 statements submitted by any Commissioner by May 17th,  
5 2009, Part A of the report produced by staff and  
6 reflecting Commissioner and panelist input on the  
7 briefing the Commission held on January 26, 2007 on  
8 educational services under the No Child Left Behind  
9 Act.

10 Part A as distributed in draft form to  
11 Commissioners on April 9th, 2009 contains a briefing  
12 overview and summary of the issue and why the  
13 Commission chose to conduct this briefing, a summary  
14 of the proceedings consisting of synopses of  
15 panelists' oral statements during the briefing, and a  
16 synopsis of the question and answer session, and  
17 finally copies of the panelists' written statements.

18 Under this motion if the majority of the  
19 Commission votes to adopt Part A of the briefing  
20 report, the Commission will then open discussion on  
21 Part B. If Part A fails to obtain a majority of  
22 votes, discussion of Part B becomes moot. This  
23 bifurcated vote is done pursuant to the policy adopted  
24 by Commissioners at the April 13th, 2007 business  
25 meeting.

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1 Is there a second?

2 VICE CHAIR THERNSTROM: Second.

3 CHAIRMAN REYNOLDS: Discussion.

4 (No response.)

5 CHAIRMAN REYNOLDS: All right.  
6 Commissioner Melendez, how do you vote? Commissioner  
7 Melendez?

8 COMMISSIONER MELENDEZ: Would you repeat  
9 that?

10 CHAIRMAN REYNOLDS: How do you vote?

11 COMMISSIONER MELENDEZ: On?

12 COMMISSIONERS: Part A.

13 COMMISSIONER MELENDEZ: Yes, we're okay  
14 with Part A.

15 CHAIRMAN REYNOLDS: I'm sorry?

16 COMMISSIONER MELENDEZ: Yes. I vote yes.

17 CHAIRMAN REYNOLDS: Commissioner Kirsanow.

18 COMMISSIONER KIRSANOW: Yes.

19 CHAIRMAN REYNOLDS: Vice Chair Thernstrom.

20 VICE CHAIR THERNSTROM: Yes.

21 CHAIRMAN REYNOLDS: Commissioner Taylor.

22 COMMISSIONER TAYLOR: Yes.

23 CHAIRMAN REYNOLDS: Commissioner Gaziano.

24 COMMISSIONER GAZIANO: Abstain, and I just  
25 want the record to reflect this briefing was before I

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1 was on the Commission, and I don't have the confidence  
2 on the subject matter to vote one way or the other.  
3 So I'll abstain from the votes on the findings and  
4 recommendations for that reason as well.

5 CHAIRMAN REYNOLDS: Commissioner Heriot.

6 COMMISSIONER HERIOT: I'm also going to  
7 abstain.

8 CHAIRMAN REYNOLDS: Commissioner Yaki.

9 COMMISSIONER YAKI: Yes.

10 CHAIRMAN REYNOLDS: Commissioners Gaziano  
11 and Heriot abstain. The remaining Commissioners vote  
12 in favor of the motion. The motion passes.

13 COMMISSIONER HERIOT: Can I also put on  
14 the record that this was before my term as well?

15 CHAIRMAN REYNOLDS: Okay.

16 VICE CHAIR THERNSTROM: Which is a  
17 reminder to all of us that we need to get these  
18 reports out in a more timely fashion.

19 COMMISSIONER GAZIANO: Yes, I voted on  
20 some briefings before my commission. This is one that  
21 I just -- and I'll try to continue to do so, but I'm  
22 not going to always succeed in getting to the  
23 confidence level I think I need to vote on this.

24 CHAIRMAN REYNOLDS: Understood. Part B as  
25 distributed in draft form to Commissioners on April

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1 9th, 2009 contains findings and recommendations for  
2 the No Child Left Behind report. Under this motion  
3 the Commission will vote individually on each finding  
4 and recommendation. Those findings and  
5 recommendations receiving a majority vote would be  
6 included in the report with a vote tally and a  
7 sentence explaining any opposition for that item.

8 The first finding, I move that we adopt  
9 the first finding, which reads as follows: "panelists  
10 testified that some school districts did a better job  
11 of notifying prospective parents about the  
12 availability of supplemental educational services,  
13 opportunities and others. Several panelists reported  
14 notification problems for Detroit, Michigan and  
15 Dallas, Texas school districts. Other panelists  
16 reported that the District of Columbia Public Schools  
17 and the Passaic, New Jersey school districts notified  
18 parents in a timely fashion. Both problems and  
19 successes and parental notifications were reported for  
20 the Camden and Newark, New Jersey school districts.

21 "An August 2006 GAO report stated that 50  
22 percent of school districts did not provide timely  
23 parental notification about SES opportunities,  
24 indicates these problems are likely to be pervasive.

25 "Successful parental notification efforts

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1 included: using parents and teacher coordinators to  
2 notify parents about SES opportunities; partnering  
3 with parents and community organizations to assist  
4 with notification; mailing parents letters explaining  
5 the rationale for SES opportunities and including a  
6 written, easy to understand guide to SES; conducting  
7 supplemental educational services provider fairs for  
8 parents with child care; advising SES availability on  
9 cable television; providing native language  
10 notification to parents; and providing parents with a  
11 customer satisfaction survey.

12 "The U.S. Department of Education now  
13 requires local educational agencies to display  
14 information about SES on their Websites in a timely  
15 manner."

16 Is there a second?

17 COMMISSIONER TAYLOR: Second.

18 CHAIRMAN REYNOLDS: Discussion.

19 COMMISSIONER MELENDEZ: Yes, this is  
20 Commissioner Melendez.

21 One question I have is: is the staff here  
22 supposed to submit recommendations?

23 VICE CHAIR THERNSTROM: It was staff in  
24 collaboration with others. These are not simply staff  
25 recommendations.

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1                   COMMISSIONER MELENDEZ:     Okay.     Because  
2 we're kind of mixing because I saw a sponsor at the  
3 top of the draft, at least the one I was sent out, and  
4 I wasn't sure whether -- because it was just like the  
5 other one that I saw Ms. Heriot's draft come to me and  
6 then the other one came.     So it was kind of like the  
7 question was whose drafts are these.

8                   I would expect that it would be part of  
9 the formal findings and then we would basically  
10 comment on that on the basis that you give us.     I'm  
11 not sure whose recommendations these are sometimes.

12                  STAFF DIRECTOR DANNENFELSER:   The original  
13 report when it was sent out to Commissioners for  
14 review did not contain findings and recommendations,  
15 and Commissioner Thernstrom has sponsored these  
16 particular findings and recommendations along with a  
17 second from Commissioner Taylor.

18                  COMMISSIONER MELENDEZ:     Okay.     I guess the  
19 question would be why wouldn't you send your draft in  
20 also?

21                  STAFF DIRECTOR DANNENFELSER:   We initially  
22 thought that we would put the report out without them  
23 and then invite Commissioners to submit findings and  
24 recommendations if they deemed that appropriate.     In  
25 the report that just went out last week, the Title 9

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1 report, that did contain findings and recommendations.

2 The normal practice going forward will be  
3 that the reports will have findings and  
4 recommendations from the staff. From certain cases,  
5 as with the covert wiretapping report, we made a  
6 determination that they weren't appropriate for that  
7 report, but going forward the usual practice will be  
8 that the reports will have findings and  
9 recommendations from the staff and then Commissioners  
10 can offer amendments to those as they see fit.

11 COMMISSIONER MELENDEZ: Okay. The other  
12 question was since some of these time frames on when  
13 these first came out, a lot of time has transpired,  
14 and because there's no regulations that have come into  
15 effect, in 2008 have we considered any changes having  
16 to do with, you know, that things have changed since  
17 the first time as far as, you know, legally revealing  
18 old reports basically that are still pending?

19 STAFF DIRECTOR DANNENFELSER: We did make  
20 a pretty substantial notation at the beginning of the  
21 report of the regulations that went into effect in  
22 October of 2008 and the findings, and recommendations  
23 do take those new regulations into account.

24 COMMISSIONER MELENDEZ: Right, because  
25 it's actually the legal sufficiency, you know, that's

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1 required by AI that we're supposed to do that we did  
2 at the beginning, but if new regulations come in, does  
3 it mean that we have to go back and --

4 STAFF DIRECTOR DANNENFELSER: There was a  
5 legal sufficiency review done --

6 COMMISSIONER MELENDEZ: After the point  
7 of --

8 STAFF DIRECTOR DANNENFELSER: --  
9 subsequent to the -- well, the legal sufficiency  
10 review did point out about the new regulations that  
11 those were taken into account. A footnote was added  
12 with a description of the new regulations.

13 COMMISSIONER MELENDEZ: Okay, all right.

14 COMMISSIONER TAYLOR: When do the new  
15 regulations go into place. Part A indicates it was  
16 November, and our notation at the beginning indicates  
17 that it was October.

18 STAFF DIRECTOR DANNENFELSER: I'll have to  
19 double back on that. I believe it was October --

20 COMMISSIONER TAYLOR: October?

21 STAFF DIRECTOR DANNENFELSER: -- of 2008.

22 If Part A indicates that, we'll make a correction.

23 CHAIRMAN REYNOLDS: Any other comments?

24 (No response.)

25 CHAIRMAN REYNOLDS: Commissioner Melendez,

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1 how do you vote?

2 COMMISSIONER MELENDEZ: No.

3 CHAIRMAN REYNOLDS: Commissioner Kirsanow.

4 COMMISSIONER KIRSANOW: Abstain.

5 CHAIRMAN REYNOLDS: Commissioner  
6 Thernstrom.

7 VICE CHAIR THERNSTROM: Yes.

8 CHAIRMAN REYNOLDS: Commissioner Taylor.

9 COMMISSIONER TAYLOR: Yes.

10 CHAIRMAN REYNOLDS: Commissioner Gaziano.

11 COMMISSIONER GAZIANO: Abstain. You can  
12 record an abstain for all of them for me.

13 CHAIRMAN REYNOLDS: Okay. Commissioner  
14 Heriot.

15 COMMISSIONER HERIOT: Abstain.

16 CHAIRMAN REYNOLDS: And can I also assume  
17 that you're going to abstain from the subsequent  
18 findings of fact and recommendations?

19 COMMISSIONER HERIOT: Unless I see  
20 something that looks wrong to me, in which case I  
21 might vote no.

22 CHAIRMAN REYNOLDS: Okay. Commissioner  
23 Yaki.

24 COMMISSIONER YAKI: Abstain.

25 COMMISSIONER MELENDEZ: I'd like to change

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1 mine to abstain. So this isn't really as a concern as  
2 the other ones.

3 CHAIRMAN REYNOLDS: Commissioner Melendez,  
4 do I understand that you're changing your vote from a  
5 no to an abstain?

6 COMMISSIONER MELENDEZ: Yes.

7 CHAIRMAN REYNOLDS: Okay. We have five  
8 abstentions: Commissioners Melendez, Kirsanow,  
9 Gaziano, Heriot and Yaki.

10 COMMISSIONER HERIOT: Should we consider  
11 putting --

12 CHAIRMAN REYNOLDS: The remaining  
13 Commissioners --

14 COMMISSIONER HERIOT: -- this off under  
15 the circumstances?

16 CHAIRMAN REYNOLDS: I'm sorry?

17 COMMISSIONER HERIOT: Should we consider  
18 putting this off under the circumstances? That's a  
19 lot of abstentions.

20 VICE CHAIR THERNSTROM: Do we have the  
21 votes, Mr. Chairman?

22 CHAIRMAN REYNOLDS: yes.

23 VICE CHAIR THERNSTROM: Then I suggest we  
24 go forward. We have taken a vote. We record the  
25 votes. We announce the results.

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1 CHAIRMAN REYNOLDS: The vote is five  
2 abstentions, three votes in favor of it. The motion  
3 passes.

4 COMMISSIONER YAKI: I move to reconsider.

5 CHAIRMAN REYNOLDS: Okay. Is there a  
6 second?

7 Okay. I second the motion.

8 COMMISSIONER TAYLOR: Point of order. I  
9 just don't know the answer to this question. Can an  
10 individual who abstained make that motion or must you  
11 be part of the prevailing party?

12 VICE CHAIR THERNSTROM: You have to be  
13 part of the prevailing party.

14 COMMISSIONER HERIOT: He can change his  
15 vote though.

16 COMMISSIONER TAYLOR: It's just a  
17 question.

18 CHAIRMAN REYNOLDS: Commissioner Yaki,  
19 would you like to change your vote?

20 COMMISSIONER YAKI: Yes, I want to change  
21 my vote to a no.

22 CHAIRMAN REYNOLDS: Okay.

23 VICE CHAIR THERNSTROM: Not part of the  
24 prevailing party.

25 COMMISSIONER HERIOT: But he can change

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1 his own vote.

2 COMMISSIONER TAYLOR: He can change his  
3 vote. He just can't make the motion to reconsider.

4 VICE CHAIR THERNSTROM: Okay.

5 COMMISSIONER YAKI: It is if we get a  
6 three-three deadlock. Then we push it back until next  
7 week. So I'm voting no.

8 CHAIRMAN REYNOLDS: No, I don't think it  
9 works that way.

10 VICE CHAIR THERNSTROM: it doesn't work  
11 that way.

12 COMMISSIONER YAKI: Why?

13 COMMISSIONER HERIOT: If it became a  
14 three-three --

15 CHAIRMAN REYNOLDS: Right now the vote is  
16 four to --

17 COMMISSIONER HERIOT: Yes, if enough  
18 people change from abstain to no or yes to a no, then  
19 it would.

20 CHAIRMAN REYNOLDS: Right now we have four  
21 abstentions, one no vote and three yes votes.

22 COMMISSIONER YAKI: Yes. So it's three  
23 yes, three noes. We decide to push it off to the next  
24 meeting.

25 CHAIRMAN REYNOLDS: But that's not the

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1 case. It's one no and --

2 COMMISSIONER YAKI: Well, I'm saying in a  
3 hypothetical, which is why I changed my vote. If  
4 anyone wishes to change with me, that's fine.

5 CHAIRMAN REYNOLDS: Okay. The motion  
6 carries.

7 COMMISSIONER HERIOT: Wait, wait, wait,  
8 wait.

9 CHAIRMAN REYNOLDS: The motion is  
10 approved.

11 Okay. The second finding, "many panelists  
12 criticized the quality of services offered by both  
13 district managed and private SES providers. These  
14 problems included children being tutored by  
15 unqualified individuals, a lack of communication  
16 between and among parents, teachers and providers  
17 regarding learning goals and strategies, consistent  
18 failures by providers to apprise parents of their  
19 children's progress, and students in SES programs not  
20 meeting their educational requirements.

21 "The U.S. Department of Education now  
22 requires local educational agencies and schools to  
23 more closely monitor the quality and effectiveness of  
24 SES services offered by an approved provider,  
25 including not only educational outcomes, but also

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1 parents' evaluations of the services."

2 Is there a second?

3 VICE CHAIR THERNSTROM: I second it.

4 CHAIRMAN REYNOLDS: Discussion.

5 (No response.)

6 CHAIRMAN REYNOLDS: Commissioner Melendez,  
7 how do you vote?

8 COMMISSIONER MELENDEZ: Abstain.

9 CHAIRMAN REYNOLDS: Commissioner Kirsanow.

10 COMMISSIONER KIRSANOW: Abstain.

11 CHAIRMAN REYNOLDS: Commissioner  
12 Thernstrom.

13 VICE CHAIR THERNSTROM: I vote yes.

14 CHAIRMAN REYNOLDS: Commissioner Taylor.

15 COMMISSIONER TAYLOR: Yes.

16 CHAIRMAN REYNOLDS: Commissioner Gaziano.

17 COMMISSIONER GAZIANO: Abstain.

18 CHAIRMAN REYNOLDS: Commissioner Heriot.

19 COMMISSIONER HERIOT: Abstain.

20 CHAIRMAN REYNOLDS: Commissioner Yaki.

21 COMMISSIONER YAKI: Abstain.

22 CHAIRMAN REYNOLDS: Okay. Commissioners  
23 Melendez, Kirsanow, Gaziano, Heriot, and Yaki  
24 abstained. Commissioners Thernstrom -- well, the  
25 remaining Commissioners voted in favor of the motion.

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1 So the motion passes.

2 Okay. The third finding. I move that we  
3 approve the following finding: "panelists raised  
4 concerns about SES funding. Among the reported  
5 problems were: SES programs were unavailable because  
6 school districts were late in releasing funds; school  
7 districts failed to address the lack of SES programs  
8 because it was against their financial interest; there  
9 were not enough openings in tutoring programs; school  
10 and districts were reluctant to fund SES programs  
11 because up to 20 percent of schools' Title 1 money  
12 must be diverted from classroom services in order to  
13 fund SES services; and at the end of the school year  
14 many school districts had funds remaining from their  
15 SES allocation.

16 "As of October 28, 2008, the U.S.  
17 Department of Education enacted strict new regulations  
18 that specified in detail the amount of funds affected  
19 schools must set aside for SES and that remove  
20 financial incentives for school districts to withhold  
21 such funds."

22 Is there a second?

23 VICE CHAIR THERNSTROM: Second.

24 CHAIRMAN REYNOLDS: Discussion.

25 (No response.)

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1 CHAIRMAN REYNOLDS: Commissioner Melendez,  
2 how do you vote?

3 COMMISSIONER MELENDEZ: Abstain.

4 CHAIRMAN REYNOLDS: Commissioner Kirsanow.

5 COMMISSIONER KIRSANOW: Abstain.

6 CHAIRMAN REYNOLDS: Commissioner -- Vice  
7 Chair Thernstrom.

8 VICE CHAIR THERNSTROM: Yes.

9 CHAIRMAN REYNOLDS: Commissioner Taylor.

10 COMMISSIONER TAYLOR: Yes.

11 CHAIRMAN REYNOLDS: Commissioner Gaziano.

12 COMMISSIONER GAZIANO: Abstain.

13 CHAIRMAN REYNOLDS: I'm sorry?

14 COMMISSIONER GAZIANO: Abstain.

15 CHAIRMAN REYNOLDS: Commissioner Heriot.

16 COMMISSIONER HERIOT: Abstain.

17 CHAIRMAN REYNOLDS: Commissioner Yaki.

18 COMMISSIONER YAKI: Abstain.

19 CHAIRMAN REYNOLDS: Same vote. We have  
20 three Commissioners voting in favor of the motion.  
21 The remaining abstains. The motion passes.

22 I move that we adopt Finding No. 4, which  
23 reads, "Several panelists stated that school districts  
24 placed unnecessary barriers to existing and  
25 prospective SES providers attempting to offer

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1 services. Among the problems discussed were: parents  
2 reported being pressured by a school district into  
3 enrolling their children with a district managed SES  
4 provider instead of a private provider; districts  
5 provided little, if any, assistance to private SES  
6 providers while assisting the providers chosen by the  
7 districts; school districts were not allowed to use  
8 their own teaching staff to provide SES services if no  
9 other provider in the area was able to provide  
10 services to individual students; and school districts  
11 in need of improvement were not allowed to use their  
12 own teaching staff to provide SES services despite  
13 evidence that their teaching staff was capable of  
14 offering a high quality program."

15 Is there a second?

16 VICE CHAIR THERNSTROM: Second.

17 CHAIRMAN REYNOLDS: Discussion.

18 (No response.)

19 CHAIRMAN REYNOLDS: Commissioner Melendez.

20 COMMISSIONER MELENDEZ: Abstain.

21 CHAIRMAN REYNOLDS: Commissioner Kirsanow.

22 COMMISSIONER KIRSANOW: Abstain, and Mr.  
23 Chair, I'll be off for the next five minutes, but I'll  
24 return.

25 CHAIRMAN REYNOLDS: Okay. Vice Chair

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1 Thernstrom.

2 VICE CHAIR THERNSTROM: Yes.

3 CHAIRMAN REYNOLDS: Commissioner Taylor.

4 COMMISSIONER TAYLOR: Yes.

5 CHAIRMAN REYNOLDS: Commissioner Gaziano.

6 COMMISSIONER GAZIANO: Abstain.

7 CHAIRMAN REYNOLDS: Commissioner Heriot.

8 COMMISSIONER HERIOT: Abstain.

9 CHAIRMAN REYNOLDS: Commissioner Yaki.

10 COMMISSIONER YAKI: Abstain.

11 CHAIRMAN REYNOLDS: Okay. We have three  
12 votes in favor, including my own, of the motion. The  
13 remaining votes were abstentions. The motion passes.

14 I move that we approve Finding No. 5,  
15 which reads, "A number of panelists pointed out the  
16 importance of parental participation in the success of  
17 SES programs. Several panelists provided testimony  
18 that their school systems make a special effort to  
19 involve parents not only in choosing a provider, but  
20 also in monitoring their children's academic progress.

21 Their testimony suggests that higher parental  
22 involvement positively affects their children's  
23 academic outcomes in SES programs.

24 "Still other panelists cited a lack of  
25 parental participation as an obstacle to the success

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1 of SES programs. Lower income parents, single parents  
2 and non-English speaking parents face special  
3 challenges in finding the time and travel resources to  
4 participate in getting their children into SES  
5 programs and monitoring their progress. Non-native  
6 English speaking parents are often put in the position  
7 of having their grade school children try to read and  
8 interpret SES notices to them. Parents with limited  
9 means of transportation have difficulty attending SES  
10 informational events as well as difficulty picking up  
11 and dropping off their children for after hours SES  
12 programs. Such parents also face difficulty in  
13 arranging transportation of their children to other  
14 better performing schools."

15 Is there a second?

16 VICE CHAIR THERNSTROM: Second.

17 CHAIRMAN REYNOLDS: Commissioner Melendez,  
18 how do you vote?

19 COMMISSIONER MELENDEZ: Abstain.

20 CHAIRMAN REYNOLDS: Commissioner Kirsanow.

21 (No response.)

22 CHAIRMAN REYNOLDS: Vice Chair Thernstrom.

23 VICE CHAIR THERNSTROM: Yes.

24 CHAIRMAN REYNOLDS: Commissioner Taylor.

25 COMMISSIONER TAYLOR: Yes.

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1 CHAIRMAN REYNOLDS: Commissioner Gaziano.

2 COMMISSIONER GAZIANO: Abstain.

3 CHAIRMAN REYNOLDS: Commissioner Heriot.

4 COMMISSIONER HERIOT: Abstain.

5 CHAIRMAN REYNOLDS: Commissioner Yaki.

6 COMMISSIONER YAKI: Abstain.

7 CHAIRMAN REYNOLDS: Okay. Commissioner  
8 Kirsanow did not participate in the vote. There are  
9 three votes in favor of the motion, four abstentions.  
10 The motion passes.

11 Now we're up to the recommendation. I  
12 move that we approve the following recommendation:  
13 "all school districts should ensure that the parents  
14 of SES eligible children receive notification about  
15 the program. School districts should provide timely  
16 notification to parents of SES eligible children so  
17 they may make an informed decision concerning their  
18 children's participation in the program. To improve  
19 their notification efforts, school districts should  
20 use methods that have succeeded in other schools."

21 Is there a second?

22 VICE CHAIR THERNSTROM: Second.

23 CHAIRMAN REYNOLDS: Discussion.

24 (No response.)

25 CHAIRMAN REYNOLDS: Commissioner Melendez?

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1 COMMISSIONER MELENDEZ: Abstain.

2 CHAIRMAN REYNOLDS: Commissioner Kirsanow.

3 (No response.)

4 CHAIRMAN REYNOLDS: Vice Chair Thernstrom.

5 VICE CHAIR THERNSTROM: Yes.

6 CHAIRMAN REYNOLDS: Commissioner Taylor.

7 COMMISSIONER TAYLOR: Yes.

8 CHAIRMAN REYNOLDS: Commissioner Gaziano.

9 COMMISSIONER GAZIANO: Abstain.

10 CHAIRMAN REYNOLDS: Commissioner Heriot.

11 COMMISSIONER HERIOT: Abstain.

12 CHAIRMAN REYNOLDS: Commissioner Yaki.

13 COMMISSIONER YAKI: Abstain.

14 CHAIRMAN REYNOLDS: Okay. Commissioner

15 Kirsanow did not participate in the vote. There are

16 three votes in favor of the motion. The remaining

17 votes are abstentions. The motion is approved.

18 I move that the second recommendation be  
19 approved. The second recommendation reads as follows:

20 "school districts could benefit from reviewing the

21 'best practices' employed by the Passaic and the

22 District of Columbia Public Schools to improve the

23 quality of SES provider services. Effective methods

24 used by these schools included: making available

25 student and parent SES provider evaluation forms;

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1 addressing complaints concerning quality of service in  
2 a timely manner; carefully monitoring providers and  
3 annually evaluating them; and using an electronic  
4 management system to coordinate SES services.

5 "Services could also be improved if states  
6 only certify providers that have proven they can  
7 deliver high quality services. To ensure high quality  
8 service, states should be allowed to mandate the  
9 employment of only highly qualified teachers by  
10 providers and should consult with school districts on  
11 quality of services offered by prospective providers.

12 School districts should also make certain that  
13 parents, schools, and SES providers closely coordinate  
14 and work together to improve student academic  
15 achievement."

16 Is there a second?

17 COMMISSIONER TAYLOR: Second.

18 CHAIRMAN REYNOLDS: Discussion?

19 VICE CHAIR THERNSTROM: Well, I don't know  
20 what a highly qualified -- I don't know how a highly  
21 qualified teacher is defined, and it's worrisome when  
22 it's given a conventional definition.

23 CHAIRMAN REYNOLDS: I share that same  
24 concern.

25 Commissioner Melendez, how do you vote?

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1 COMMISSIONER MELENDEZ: Abstain.

2 CHAIRMAN REYNOLDS: Commissioner Kirsanow.

3 (No response.)

4 CHAIRMAN REYNOLDS: Vice Chair Thernstrom.

5 VICE CHAIR THERNSTROM: I don't know. I  
6 would like that struck, the highly qualified teachers.

7 CHAIRMAN REYNOLDS: Okay. So you want to  
8 back up and continue the discussion to see if we can  
9 come up with some language?

10 VICE CHAIR THERNSTROM: Yes, I would like  
11 to.

12 CHAIRMAN REYNOLDS: Okay. Let's see it.  
13 How about --

14 VICE CHAIR THERNSTROM: Do you know what?  
15 If we restricted it to simply services could also be  
16 improved if states only certify providers that have  
17 proven they can deliver high quality services, period,  
18 end.

19 COMMISSIONER TAYLOR: Yep.

20 CHAIRMAN REYNOLDS: Okay. With that  
21 friendly amendment, Commission Melendez, how do you  
22 vote?

23 COMMISSIONER MELENDEZ: Abstain.

24 CHAIRMAN REYNOLDS: Commissioner Kirsanow.

25 (No response.)

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1 CHAIRMAN REYNOLDS: Vice Chair Thernstrom.

2 VICE CHAIR THERNSTROM: Yes.

3 CHAIRMAN REYNOLDS: Commissioner Taylor.

4 COMMISSIONER TAYLOR: Yes.

5 CHAIRMAN REYNOLDS: Commissioner Gaziano.

6 COMMISSIONER GAZIANO: Abstain.

7 CHAIRMAN REYNOLDS: I'm sorry,  
8 Commissioner Gaziano.

9 COMMISSIONER GAZIANO: Abstain.

10 CHAIRMAN REYNOLDS: Commissioner Heriot.

11 COMMISSIONER HERIOT: Abstain.

12 CHAIRMAN REYNOLDS: Commissioner Yaki.

13 COMMISSIONER YAKI: Abstain.

14 CHAIRMAN REYNOLDS: Okay. Vice Chair  
15 Thernstrom fixed my concern. So I'm voting for it.  
16 We have three votes in favor of the motion, four  
17 abstentions. Commission Kirsanow did not participate  
18 in the vote. The motion passes.

19 I move that we approve Recommendation No.  
20 3, which reads, "School districts should provide funds  
21 for SES services in a timely fashion to maximize  
22 parental choice and opportunities for their children  
23 to benefit from SES. Responsible parties should make  
24 certain that all tutoring programs have sufficient  
25 capacity to meet projected student enrollment.

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1 Sufficient funds should be provided to cover all SES  
2 related expenses. School districts should ensure that  
3 their SES funds are used effectively and for the  
4 benefit of participating students."

5 Is there a second?

6 VICE CHAIR THERNSTROM: I second that.

7 CHAIRMAN REYNOLDS: Discussion?

8 (No response.)

9 CHAIRMAN REYNOLDS: Commissioner Melendez,  
10 how do you vote?

11 COMMISSIONER MELENDEZ: Abstain.

12 CHAIRMAN REYNOLDS: Has Commissioner  
13 Kirsanow returned?

14 (No response.)

15 CHAIRMAN REYNOLDS: Vice Chair Thernstrom.

16 VICE CHAIR THERNSTROM: Yes.

17 CHAIRMAN REYNOLDS: Commissioner Taylor.

18 COMMISSIONER TAYLOR: Yes.

19 CHAIRMAN REYNOLDS: Commissioner Gaziano.

20 COMMISSIONER GAZIANO: Abstain.

21 CHAIRMAN REYNOLDS: Commissioner Heriot.

22 COMMISSIONER HERIOT: Abstain.

23 CHAIRMAN REYNOLDS: Commissioner Yaki.

24 COMMISSIONER YAKI: Abstain.

25 CHAIRMAN REYNOLDS: Okay. The same

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1 configuration as last time. Commissioner Kirsanow  
2 didn't participate in the vote. We have three votes  
3 in favor of the motion. The remaining votes were  
4 abstentions. The motion passes.

5 I move that we approve Recommendation No.  
6 4, which reads, "School Districts should insure that  
7 parents are able to select an SES provider that best  
8 meets the educational needs of their children without  
9 regard to whether the SES provider is a school  
10 district or a private provider. School districts  
11 should also insure that parents are allowed to  
12 evaluate the merits of private SES providers and are  
13 allowed to select a private provider for their  
14 children if they feel that choice best meets the needs  
15 of their children. Districts should not pressure  
16 parents to use district supplied providers, nor should  
17 districts be allowed to discourage parents from  
18 choosing a private provider. Districts that are in  
19 need of improvement should only be allowed to use  
20 their own teaching staff to provide SES services if it  
21 is determined that their staff is qualified and able  
22 to provide a high quality program."

23 Is there a second?

24 VICE CHAIR THERNSTROM: Second.

25 CHAIRMAN REYNOLDS: Discussion?

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1 (No response.)

2 CHAIRMAN REYNOLDS: Okay. Commissioner  
3 Melendez?

4 COMMISSIONER MELENDEZ: Abstain.

5 CHAIRMAN REYNOLDS: Has Commissioner  
6 Kirsanow returned?

7 (No response.)

8 CHAIRMAN REYNOLDS: Vice Chair Thernstrom.

9 VICE CHAIR THERNSTROM: Yes.

10 CHAIRMAN REYNOLDS: Commissioner Taylor.

11 COMMISSIONER TAYLOR: Yes.

12 CHAIRMAN REYNOLDS: Commissioner Gaziano.

13 COMMISSIONER GAZIANO: Abstain,  
14 notwithstanding that I like the idea of parental  
15 choice in general and would probably support this one  
16 if I had more confidence in understanding the statute.

17 CHAIRMAN REYNOLDS: Commissioner Heriot.

18 COMMISSIONER HERIOT: Abstain.

19 CHAIRMAN REYNOLDS: Commissioner Yaki.

20 COMMISSIONER YAKI: No.

21 CHAIRMAN REYNOLDS: Okay. I'm going to  
22 abstain. We have one no vote, four abstentions.  
23 Commissioner Kirsanow didn't participate in the vote.  
24 Two yes votes, and the motion passes.

25 I move that Recommendation 5 be approved

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1 by the Commission. That recommendation reads as  
2 follows: "the proper authorities should assess the  
3 'parent profile' for their districts and design SES  
4 strategies that take into account the particular  
5 socioeconomic situation of the students' parents.

6 "In districts where parents are inclined  
7 to be active partners with their children's SES  
8 programs, the focus should be on accommodating and  
9 encouraging those parents to participate in the  
10 programs.

11 "In districts where parental participation  
12 tends to be low, schools should consider alternate  
13 strategies for implementing SES that provide more  
14 direct support and encouragement to the students  
15 themselves and that are less dependent on the parents'  
16 participation for success."

17 Is there a second?

18 VICE CHAIR THERNSTROM: Second.

19 CHAIRMAN REYNOLDS: Discussion.

20 COMMISSIONER TAYLOR: We start with proper  
21 authorities.

22 CHAIRMAN REYNOLDS: I'm sorry?

23 COMMISSIONER TAYLOR: I'm sorry. We start  
24 with the phrase "the proper authorities." Would it be  
25 too restrictive --

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1 CHAIRMAN REYNOLDS: Okay. Let me catch up  
2 with you.

3 COMMISSIONER TAYLOR: Yes, just the first.  
4 We start with the proper authorities. The question  
5 is whether or not that should read "the school  
6 districts" or not.

7 CHAIRMAN REYNOLDS: Okay. I'm sure I  
8 consider that a friendly amendment.

9 COMMISSIONER TAYLOR: It's really a  
10 question.

11 CHAIRMAN REYNOLDS: Oh.

12 COMMISSIONER TAYLOR: Yes, it's a question  
13 for the floor.

14 CHAIRMAN REYNOLDS: okay. Well, I will  
15 offer that as a friendly amendment. I think that  
16 actually the issue that you pointed out is important.

17 VICE CHAIR THERNSTROM: Okay, but we don't  
18 need the redundancy then, "for their districts." "The  
19 district should assess their parent profiles and  
20 design SES" --

21 COMMISSIONER TAYLOR: Profiles.

22 VICE CHAIR THERNSTROM: "Profiles and  
23 design SES." We don't need "districts should for  
24 their district."

25 CHAIRMAN REYNOLDS: Okay.

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1 VICE CHAIR THERNSTROM: Just cleaning up  
2 the language.

3 CHAIRMAN REYNOLDS: Any other questions or  
4 comments?

5 (No response.)

6 CHAIRMAN REYNOLDS: Commissioner Melendez,  
7 how do you vote?

8 COMMISSIONER MELENDEZ: Abstain.

9 CHAIRMAN REYNOLDS: Commissioner Kirsanow.

10 COMMISSIONER KIRSANOW: I'm back, but I  
11 didn't hear the discussion. I'll have to abstain.

12 CHAIRMAN REYNOLDS: Vice Chair Thernstrom.

13 VICE CHAIR THERNSTROM: Yes, but,  
14 Commissioner Kirsanow, there was basically no  
15 discussion. If you just look at Recommendation 5,  
16 there wasn't any discussion except changing from  
17 "proper authorities" to "districts." If you just look  
18 at the language, you can vote.

19 COMMISSIONER KIRSANOW: Nonetheless I'll  
20 abstain.

21 CHAIRMAN REYNOLDS: Okay. Let's see.  
22 Commissioner Taylor.

23 COMMISSIONER TAYLOR: Yes.

24 CHAIRMAN REYNOLDS: Commissioner Gaziano.

25 COMMISSIONER GAZIANO: Abstain.

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1 CHAIRMAN REYNOLDS: Commissioner Heriot.

2 COMMISSIONER HERIOT: Abstain.

3 CHAIRMAN REYNOLDS: Commissioner Yaki.

4 COMMISSIONER YAKI: Abstain.

5 CHAIRMAN REYNOLDS: Okay. We have one,  
6 two, three, four, five abstentions; three in favor of  
7 the motion. The motion has been approved.

8 VICE CHAIR THERNSTROM: Mr. Chairman, I  
9 really regret very much to say, since I am extremely  
10 interested in the proposal that is about to be  
11 discussed, but I have to leave.

12 CHAIRMAN REYNOLDS: I understand.

13 STAFF DIRECTOR DANNENFELSER: Mr.  
14 Chairman.

15 CHAIRMAN REYNOLDS: Yes.

16 STAFF DIRECTOR DANNENFELSER: I'd like to  
17 propose a comment period for Commissioner comments.  
18 Go back to the first report on the 2008 election  
19 enforcement, that we have a comment period of May 17th  
20 for comments on that report, and that since we have  
21 two reports here, that we extend the comment period  
22 for the No Child Left Behind report to June 17th.

23 CHAIRMAN REYNOLDS: Okay. Walk me through  
24 your dates again. First identify the briefing report  
25 that you've spoken about.

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1                   STAFF DIRECTOR DANNENFELSER:     For the  
2 Justice Department's enforcement of the 2008  
3 presidential election, that we have a Commissioner  
4 comment period that runs until May 17th, and that for  
5 the No Child Left Behind briefing report we have a  
6 Commissioner comment period that runs until June 17th.

7                   COMMISSIONER HERIOT:     Before we adopt  
8 those dates, I have two other questions relative to  
9 dates. Keeping in mind that we may get the draft 2009  
10 statutory report a little later than the April 27th,  
11 we still then should try to keep on track. What is a  
12 reasonable period for us to be reviewing that? And  
13 that's going to be a longer document.

14                   What is the next -- if I could ask maybe  
15 the General Counsel if he's more familiar with that to  
16 comment -- what is our next deadline? I don't have  
17 that in front of me.

18                   MR. BLACKWOOD:     Frankly, I don't have it  
19 in front of me either, but we would have to extend  
20 your review time for a week as well.

21                   COMMISSIONER GAZIANO:     That may be. I  
22 just want to know how many balls we're going to have  
23 up in the air. If we have one versus the other, I'd  
24 prefer the one I abstained from to be first and to  
25 have a little more time on the Justice Department

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1 preparation, but I also just want us all to be, when  
2 we agree to these deadlines, to be aware of what else  
3 we have on our plate.

4 STAFF DIRECTOR DANNENFELSER: The schedule  
5 that had been developed anticipated a 30-day comment  
6 period for the statutory report. So if it had been  
7 April 27th, it would have been May 27th. So I guess  
8 under that we would anticipate if it's May 4th, that  
9 it would be June 4th.

10 COMMISSIONER GAZIANO: Yes, I assume that  
11 that will be most of our first priority since it's  
12 longer and we have a statutory deadline to keep. I  
13 just want to factor that in.

14 I also want to ask for these or any  
15 reports -- and I suspect we may utilize it more on the  
16 Justice Department report -- that we are going to  
17 circulate all Commissioner comments promptly to allow  
18 for rebuttal period.

19 STAFF DIRECTOR DANNENFELSER: I think  
20 that's something that the Commissioners will have to  
21 vote on.

22 COMMISSIONER GAZIANO: I thought we had  
23 generally decided going forward we were going to have  
24 a rebuttal period, but if not, then I just want to  
25 clarify that we should generally have a rebuttal

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1 opportunity, and I know we haven't finalized and we  
2 can finalize maybe at the next meeting whether we're  
3 going to, you know, detail about page limits and that  
4 sort of thing, which we never did. We set them for  
5 one last fall. Whether we want to stick to those,  
6 revise them, we should probably get to that. It's a  
7 good reminder.

8 But I do want to make sure that  
9 Commissioner statements for these are circulated, and  
10 that we have a chance to --

11 COMMISSIONER HERIOT: Promptly.

12 COMMISSIONER GAZIANO: Promptly, and that  
13 we have a chance to respond.

14 STAFF DIRECTOR DANNENFELSER: Well, again,  
15 that is something that we did for the 2008 report, and  
16 there has been discussion of making that a more  
17 broadly based policy, but it's my understanding that  
18 we have not formally voted for a broad policy of doing  
19 that. So I believe we would have to vote to do that  
20 for this particular report, and we would also have to  
21 factor that into our --

22 COMMISSIONER HERIOT: I move --

23 STAFF DIRECTOR DANNENFELSER: -- at the  
24 end of the process.

25 COMMISSIONER HERIOT: I move that for this

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1 and all future briefing reports and statutory reports  
2 until we pass a more detailed rule, that for all such  
3 reports that the Staff Director promptly circulate all  
4 Commissioner statements and that other Commissioners  
5 have the right to write a response that would be due  
6 30 days after the Staff Director circulates those  
7 statements.

8 COMMISSIONER GAZIANO: A friendly  
9 amendment. That the subsequent statements should also  
10 be promptly circulated to not necessarily open up a  
11 third unless there's some issue that a Commissioner  
12 thinks is unfair or unreasonable, and so on.

13 COMMISSIONER HERIOT: Okay. That's a  
14 friendly amendment.

15 STAFF DIRECTOR DANNENFELSER: I think  
16 we're going to run into a problem.

17 COMMISSIONER GAZIANO: I second it.

18 STAFF DIRECTOR DANNENFELSER: If we have  
19 two 30-day periods there, that's going to really put  
20 us in a bind as far as getting reports done by  
21 September 30th.

22 COMMISSIONER GAZIANO: The statutory  
23 report, I think the comment period would only be after  
24 we approved the final report, not for review. Our  
25 interim review is not the comment period. So I don't

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1 think that it would be a concern.

2 But once we approve, you know, Part A and  
3 finding some recommendations for any future report,  
4 whether it's statutory report, briefing report,  
5 hearing report, Commissioner Heriot's motion is that  
6 wherever Commissioners are writing their own comments,  
7 that those are promptly circulated when received, and  
8 that there is a period, in her motion 30 days --

9 COMMISSIONER HERIOT: We ought to add days  
10 for the original statement, too. Let me reformulate  
11 the motion.

12 For these newly adopted briefing reports  
13 and for any subsequent briefing reports, I move that  
14 Commissioners have 30 days from the date of adoption  
15 to write their statements unless some other rule is  
16 set in a particular case; that the Staff Director  
17 promptly circulate those statements and that  
18 Commissioners have 30 days from the date of that  
19 circulation to write a response, and that those  
20 responses also be promptly circulated by the Staff  
21 Director.

22 So 30 days, 30 days.

23 CHAIRMAN REYNOLDS: Okay. Now, Mr. Staff  
24 Director, that proposal, how does it fit in the  
25 context of Lean Six Sigma?

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1                   STAFF DIRECTOR DANNENFELSER:    The second  
2 comment period is not anticipated within Lean Six  
3 Sigma.

4                   CHAIRMAN REYNOLDS:            So that would  
5 essentially add 30 days to the process. So that would  
6 bring us under Lean Six Sigma currently from end to  
7 end we should be done within 70 days; is that correct?

8                   STAFF DIRECTOR DANNENFELSER:    No.    The  
9 whole process of Lean Six Sigma from the period of the  
10 point of the briefing is about seven and a half  
11 months.

12                  CHAIRMAN REYNOLDS:    Oh, I'm sorry. That's  
13 right. So we would be tacking on 30 days to that  
14 amount of time.

15                  STAFF DIRECTOR DANNENFELSER:    Yes. Now,  
16 in the context of the statutory report that becomes  
17 more problematic because we have a high deadline that  
18 we have to get that to Congress by September 30th.

19                  COMMISSIONER GAZIANO:        Maybe we should  
20 reconsider a special rule for the statutory report,  
21 but that we are going to accept that there is going to  
22 be a rebuttal period that we're going to have to work  
23 in.

24                  Obviously we missed the September 30  
25 deadline last year. I'm not sure that is something

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1 that we want to do again this year. So maybe we can  
2 just punt on exactly what our timing is going to be  
3 for this year's statutory report.

4 COMMISSIONER TAYLOR: I think in the past  
5 when we have discussed this there have been briefing  
6 reports that no Commissioner intended to submit  
7 supporting or opposing personal statements, and so we  
8 saw no need to delay the process of finalizing the  
9 report for that reason. So I would have for this  
10 process to unnecessarily lengthen the publication of  
11 our final document.

12 COMMISSIONER GAZIANO: A further friendly  
13 amendment is that if no Commissioner submits a comment  
14 within the comment period or all Commissioners  
15 indicate to the Staff Director they're not going to,  
16 then it's final, and we probably should write this up  
17 in a rule.

18 And after the first round of comments, we  
19 can all promptly notify the Commissioner that we have  
20 no further comments, and so we can cut these periods  
21 short. These are sort of the periods --

22 COMMISSIONER HERIOT: The idea here is to  
23 have a default rule.

24 COMMISSIONER TAYLOR: Yes. No, it's my  
25 recommendation that we get the Staff Director to write

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1 this up. I mean, I like it.

2 COMMISSIONER HERIOT: Yes.

3 COMMISSIONER TAYLOR: I just want to --

4 COMMISSIONER HERIOT: I think that we're  
5 going to have to write this up.

6 COMMISSIONER TAYLOR: Okay.

7 COMMISSIONER HERIOT: And I would like to  
8 just have a default rule in place now so that we don't  
9 make the mistake of believing that there won't be  
10 replies when I intend to write one.

11 COMMISSIONER TAYLOR: Right.

12 COMMISSIONER HERIOT: No, the idea that  
13 Lean Six Sigma, you know, doesn't allow for this is  
14 putting the cart before the horse.

15 STAFF DIRECTOR DANNENFELSER: No, it  
16 presently doesn't anticipate it. Commissioners can  
17 always amend the process.

18

19 COMMISSIONER HERIOT: And we're doing that  
20 right now.

21 STAFF DIRECTOR DANNENFELSER: It's on the  
22 table.

23 COMMISSIONER YAKI: Of course, we did  
24 spend what, \$200,000 on Lean Six Sigma.

25 COMMISSIONER GAZIANO: And it will greatly

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1 improve the staff work --

2 COMMISSIONER YAKI: I'm sure --

3 COMMISSIONER GAZIANO: -- the staff work  
4 that goes to getting these --

5 COMMISSIONER YAKI: -- days on briefing  
6 reports that are illegitimate to begin with. Perfect.

7 CHAIRMAN REYNOLDS: So, Michael, we know  
8 your views on this issue.

9 Folks, where are we in the process?

10 COMMISSIONER GAZIANO: We have a motion, I  
11 think, with two friendly amendments.

12 COMMISSIONER HERIOT: And no second yet.

13 COMMISSIONER GAZIANO: Second.

14 CHAIRMAN REYNOLDS: Okay, and we're voting  
15 on the fifth and final recommendation?

16 COMMISSIONER GAZIANO: Oh, I thought we  
17 had --

18 COMMISSIONER HERIOT: No, that's done.

19 COMMISSIONER GAZIANO: No, we got done.

20 COMMISSIONER TAYLOR: That's done.

21 CHAIRMAN REYNOLDS: Okay. What are we  
22 voting on?

23 COMMISSIONER GAZIANO: Staff Director was  
24 proposing times for comments.

25 CHAIRMAN REYNOLDS: So let's go through

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1 this again after this discussion. What is the  
2 proposed ate for the enforcement briefing report.

3 COMMISSIONER HERIOT: No. Gerry, I've  
4 made a motion here. I made a motion for a default  
5 rule as to all such briefing reports, that there would  
6 be a 30-day period from the date it's adopted, and  
7 then the Staff Director would promptly circulate those  
8 statements that have been written, and 30 days from  
9 the date that they are circulated, replies would be  
10 due, and the Staff Director would be directed to  
11 circulate those replies.

12 CHAIRMAN REYNOLDS: Okay. I must proceed  
13 now.

14 If there's no further discussion,  
15 Commissioner Melendez, how do you vote?

16 COMMISSIONER MELENDEZ: Well, I do have  
17 discussion. Are you saying that we're actually  
18 setting in a policy that we're working on?

19 COMMISSIONER HERIOT: This is a just a --  
20 before we have a better rule that is written and more  
21 detailed, this would be our default rule, which we can  
22 change for any particular report.

23 COMMISSIONER GAZIANO: And, for example,  
24 we may extend the date since we have three potentially  
25 to come --

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1                   COMMISSIONER HERIOT: Yes. What I don't  
2 want to happen is that a report gets adopted and we  
3 forget to set a period. This would just be the  
4 default. We could have any other rule in place for  
5 any particular report, but I don't want a situation  
6 where we leave the room forgetting to set the timing  
7 for responses and replies and then it's too late to do  
8 so without calling an entire meeting of the  
9 Commission.

10                   COMMISSIONER GAZIANO: Yes, and I think --

11                   CHAIRMAN REYNOLDS: Okay. Commissioner  
12 Melendez, has that led you to the information you were  
13 seeking?

14                   COMMISSIONER MELENDEZ: Well, are we  
15 talking about dissents here?

16                   COMMISSIONER HERIOT: We're talking about  
17 dissents --

18                   COMMISSIONER GAZIANO: Responses, whatever  
19 they are.

20                   COMMISSIONER HERIOT: Responses, all  
21 responses.

22                   COMMISSIONER GAZIANO: Let's just call  
23 them responses.

24                   COMMISSIONER HERIOT: Anything, anything  
25 you want to write. This is what gives you the right

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1 when you walk out of the room if we've forgotten to  
2 set the time period for your statement, whether it's  
3 concurrence or dissent, you will have that right, and  
4 you will have the right to respond to what someone  
5 else says.

6 COMMISSIONER GAZIANO: Except that  
7 Commissioners are sort of good faith in understanding  
8 when we discussed this was that you should not hold  
9 back information from a response that -- and that  
10 responses should generally be responsive to other  
11 Commissioners' comments.

12 COMMISSIONER YAKI: Mickey is calling you  
13 on that line.

14 CHAIRMAN REYNOLDS: I'm sorry?

15 STAFF DIRECTOR DANNENFELSER: The question  
16 as it pertains to these two particular briefing  
17 reports, are you proposing that they both have a  
18 deadline of May 17th?

19 COMMISSIONER GAZIANO: Let's vote on the  
20 motion. Let's vote on the motion. I prefer to vote  
21 on the motion first --

22 COMMISSIONER HERIOT: Yes, all I want is a  
23 default and then we can modify.

24 COMMISSIONER GAZIANO: -- and then we can  
25 -- and then we can see whether we want to modify it

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1 for these three.

2 CHAIRMAN REYNOLDS: Folks, slow down.  
3 What are we voting on now? Are we voting on Gail's  
4 motion?

5 COMMISSIONER GAZIANO: Correct.

6 COMMISSIONER HERIOT: Yes, just as a  
7 default rule so we've got something in place, and then  
8 we can change it --

9 CHAIRMAN REYNOLDS: I understand.

10 COMMISSIONER HERIOT: -- for these  
11 particular reports.

12 CHAIRMAN REYNOLDS: Okay. Commissioner  
13 Melendez, how do you vote?

14 COMMISSIONER MELENDEZ: No.

15 CHAIRMAN REYNOLDS: Commissioner Kirsanow.  
16 Is Commissioner Kirsanow still on the line?

17 (No response.)

18 CHAIRMAN REYNOLDS: Okay, and please  
19 confirm that Vice Chair Thernstrom has left.

20 COMMISSIONER GAZIANO: She has.

21 CHAIRMAN REYNOLDS: Commissioner Taylor.

22 COMMISSIONER TAYLOR: Yes.

23 CHAIRMAN REYNOLDS: Commissioner Gaziano.

24 COMMISSIONER GAZIANO: Yes.

25 CHAIRMAN REYNOLDS: Commissioner Heriot.

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1 COMMISSIONER HERIOT: Yes.

2 CHAIRMAN REYNOLDS: Commissioner Yaki.

3 COMMISSIONER YAKI: No.

4 CHAIRMAN REYNOLDS: Okay. We have two nos  
5 and the remaining votes support the motion. The  
6 motion passes.

7 So what does this all mean about the date?

8 COMMISSIONER HERIOT: Now we can set a  
9 particular date.

10 CHAIRMAN REYNOLDS: Okay. Hold on.  
11 Commissioners Yaki.

12 COMMISSIONER YAKI: Thank you very much.

13 I have said in the past, and I'll say it  
14 again, I'm not a big fan of our statements being due  
15 contemporaneous with a Commission meeting, and our  
16 next Commission meeting is the Friday two days before  
17 May 17th.

18 COMMISSIONER GAZIANO: Yes, I propose that  
19 we extend the ones for both voting rights and No Child  
20 Left Behind because I want to concentrate on the  
21 statutory report, and I assume other Commissioners  
22 may. So why don't we set May -- is May a month with  
23 31 days? -- May 31? Is that a week day?

24 COMMISSIONER TAYLOR: It's a Friday.

25 COMMISSIONER GAZIANO: That's a Sunday.

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1 COMMISSIONER TAYLOR: Oh, no, Sunday.

2 COMMISSIONER GAZIANO: So why don't we say  
3 June 1 as the day for initial comments.

4 CHAIRMAN REYNOLDS: For which --

5 COMMISSIONER GAZIANO: For the Voting  
6 Rights Act that we just approved and the No Child Left  
7 Behind that we just approved.

8 CHAIRMAN REYNOLDS: Okay. So they would  
9 be due at the same time.

10 COMMISSIONER GAZIANO: Commissioners can  
11 work on one or both, but that subject -- if someone  
12 wants to make it June 10, whatever, but.

13 COMMISSIONER HERIOT: And then have the  
14 replies due, again, 30 days after the Staff  
15 Director --

16 COMMISSIONER GAZIANO: Thirty days after  
17 the Staff Director circulates our comments.

18 CHAIRMAN REYNOLDS: Okay. Is that  
19 acceptable to everyone?

20 (No response.)

21 CHAIRMAN REYNOLDS: Okay.

22 STAFF DIRECTOR DANNENFELSER: Well, can I  
23 just pick up on something Commissioner Gaziano  
24 mentioned a few minutes ago? If a Commissioner knows  
25 that they are not going to comment, if they could let

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1 me know that that way we can know when everyone who  
2 wants an opportunity to comment --

3 COMMISSIONER GAZIANO: That's very  
4 reasonable.

5 STAFF DIRECTOR DANNENFELSER: -- has done  
6 so, and we might be able to shorten some of these time  
7 frames under that --

8 COMMISSIONER TAYLOR: A recommendation.  
9 You should ask us.

10 STAFF DIRECTOR DANNENFELSER: Oh, I will.

11 COMMISSIONER TAYLOR: Don't just rely upon  
12 us. Just ask us.

13 STAFF DIRECTOR DANNENFELSER: Okay.

14 COMMISSIONER TAYLOR: Because you'll get  
15 answers faster.

16 CHAIRMAN REYNOLDS: Okay. At this point  
17 are we done with those particular issues?

18 (No response.)

19 CHAIRMAN REYNOLDS: Good enough.  
20 Commissioner Taylor has prepared a briefing proposal  
21 on health care disparities. A concept paper was  
22 circulated with the meeting materials you received  
23 last week.

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**BRIEFING OF HEALTH DISPARITIES**

CHAIRMAN REYNOLDS: The briefing would consist of two panels dealing with the persistent gaps between the health status of minorities and non-minorities. I propose that we consider this topic in two parts.

First we will vote on whether this is a briefing topic the Commission wants to adopt, and we can hear more from Commissioner Taylor about his concept paper during that time, and then we'll vote to select a date for the briefing.

Is there a second?

COMMISSIONER GAZIANO: Second.

CHAIRMAN REYNOLDS: Okay. Commissioner Taylor, you're on.

COMMISSIONER TAYLOR: Given where we are, as I look at the clock, I won't go into great detail.

Everyone, I think has read the concept paper and the briefing proposal. I want to give most of this credit to Kim. She's done a great job in working with the staff. They have put together, I think a great paper.

The one thing I would say is that in giving this even more thought it may be beneficial if we focus on even more narrowly a particular disease or condition, and I'd be open to those suggestions, but I

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1 just want to keep this as revised as possible so that  
2 we do not have a wide ranging discussion, but we can  
3 really focus on something and ask the panelists that  
4 are coming to be very specific in their comments.

5 So I'd be open to any thoughts about what  
6 folks think we could do along those lines.

7 COMMISSIONER HERIOT: I guess I have a  
8 couple of comments. I agree this is a great topic,  
9 and I also agree that focusing it a little bit more is  
10 probably a good idea. The area that I thought might  
11 be good would be heart disease and hypertension as  
12 opposed to just everything in the whole world because  
13 I think heart disease and hypertension has a lot to  
14 it.

15 And that would also mean, I think, not  
16 focusing so much or perhaps not at all on the federal  
17 program that the briefing proposal talks about and  
18 rather just focusing on heart disease and  
19 hypertension.

20 COMMISSIONER GAZIANO: I'd like to sort of  
21 add along those lines to focus a little bit more on  
22 our jurisdiction. We ought to look at whether the  
23 provision of health care -- what its impact is having  
24 on heart disease, and especially to the extent to  
25 which intentional or unintentional discrimination of

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1 the type that we have the authority to look at is a  
2 contributing factor, how much of a contributing factor  
3 it might be if it is a contributing factor, and what  
4 other factors might be leading to disparities in  
5 health care outcome for the heart disease, if that's  
6 what we're going to be focusing on.

7 CHAIRMAN REYNOLDS: Commissioner Gaziano,  
8 would you clarify or define what you mean by  
9 "unintentional discrimination"?

10 COMMISSIONER GAZIANO: I suppose I mean  
11 subconscious. A doctor might look at one type of  
12 patient and -- I don't know -- his heart may go out  
13 more to some one of one race or sex.

14 CHAIRMAN REYNOLDS: I've got you.

15 COMMISSIONER GAZIANO: But not  
16 necessarily. I suppose there are some, I understand,  
17 accusations that this exists. It may not exist as  
18 claimed at the conscious level.

19 Other people say, no, it's that people of  
20 certain races actually come into the doctor's office  
21 too late. It's harder to control, but there may be  
22 some attitudes about whether certain people in certain  
23 communities are worthy of expensive drugs or worthy of  
24 invasive procedures.

25 But I want to focus on the possible

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1 discrimination.

2 CHAIRMAN REYNOLDS: Understood. Okay.  
3 Commission Melendez, how do you vote?

4 COMMISSIONER MELENDEZ: Well, I just had a  
5 comment. This seems to be a broad topic, and is this  
6 actually a briefing that we're looking at here?

7 COMMISSIONER TAYLOR: Correct. This will  
8 be a briefing, and I hope the suggestions we've heard  
9 today focusing on heart disease and hypertension and  
10 being very specific in terms of our requests for all  
11 of the panelists to focus on when they identify  
12 disparity, whether the disparity is caused by  
13 discrimination in their opinion, whatever their  
14 opinion may be, other aspects whether it's cultural,  
15 personal decisions, whatever their answers may be, but  
16 be very focused on not only identifying a disparity,  
17 but identifying the source of the disparity based on  
18 their research or experience and doing it in the  
19 context of hypertension or heart disease.

20 And I think if we limit it to those  
21 specific issues it won't be a wide ranging discussion.

22 COMMISSIONER MELENDEZ: What about what  
23 the country kind of looking at, you know, covering  
24 health care for every citizen and all of those  
25 different things they're looking at now? Would this

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1 be a possibility for a statutory report?

2 COMMISSIONER TAYLOR: I don't know the  
3 answer to the questions whether or not it could be,  
4 but I would think this would not preclude us from  
5 making this a statutory report, and in fact, if we  
6 focus this briefing on hypertension and heart disease,  
7 it may tell us whether or not we want to use this  
8 topic in a more expanded form as the foundation for  
9 our statutory reports. So it could be helpful to  
10 inform our decision, I think.

11 COMMISSIONER MELENDEZ: The other disease  
12 I'm real concerned about is diabetes because I know  
13 Native Americans and African-Americans, I know a lot  
14 of people, which they usually get that first. Then  
15 they basically have the heart problems after the  
16 diabetes. I'm not sure. I just want to include that  
17 as a possibility of our -- if we're going to look at a  
18 specific disease.

19 COMMISSIONER TAYLOR: I consider that to  
20 be a friendly suggestion, and I would -- I'm not going  
21 to do this. I'm going to ask Kim to work with other  
22 members of the staff to consider diabetes as well in  
23 terms of, again, keeping us focused and then we select  
24 one, hopefully have a little flexibility after we get  
25 this passed today.

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1           So it will either be diabetes, heart  
2 disease, back slash, hypertension, but one of those  
3 two categories to keep us focused. I consider that to  
4 be a friendly and helpful suggestion.

5           COMMISSIONER GAZIANO: And I take it  
6 there's consensus. I'd like the vote, when we approve  
7 this, to be that we're going to be -- the Commission  
8 is going to be focusing on the delivery of health care  
9 rather than, you know, -- and the extent to which the  
10 delivery of health care leads to these results and  
11 that necessarily will involve people saying, well,  
12 with regard to whatever disease we pick, there are  
13 these other causes, and it's not the delivery of  
14 health care.

15           COMMISSIONER YAKI: Why not?

16           COMMISSIONER GAZIANO: Pardon?

17           COMMISSIONER YAKI: Why not?

18           COMMISSIONER GAZIANO: Why not what?

19           COMMISSIONER YAKI: Why wouldn't that be a  
20 legitimate area to delve into?

21           COMMISSIONER GAZIANO: I'm just saying our  
22 main research question ought to be whether the  
23 delivery of health care is contributing and to what  
24 extent, if it is contributing to these.

25           COMMISSIONER YAKI: Why is it delivery of

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1 health -- it is disparity. This is not about health  
2 care delivery. It's health care disparity.

3 COMMISSIONER GAZIANO: Yes, I'm trying  
4 to --

5 COMMISSIONER YAKI: The conditions that  
6 exist in these people, not whether or not -- I don't  
7 know. I mean, I don't know where exactly -- when I  
8 looked at this topic I wasn't quite sure exactly where  
9 -- there is a subsequent briefing that we should be  
10 considering that is a corollary to this, and that goes  
11 into the issue of environmental justice, when you look  
12 at asthma rates among minority kids, when you look at  
13 exposure to lead poisoning, when you look at infant  
14 mortality. There are health disparities present there  
15 that have been well documented by any number of  
16 different studies, and some of those questions go not  
17 just to the health care delivery system, but to the  
18 issues that environmental justice has and where  
19 through deliberate acts by zoning and planning  
20 officials things are located in a way that cause more  
21 health problems and that has a serious and substantial  
22 impact on the populations of people who have to live  
23 in those areas for which there's a strong correlation  
24 with minority or newcomer status.

25 So I'm all in favor of what Commissioner

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1 Taylor is doing, but I don't think that we should  
2 simply narrow it to whether or not we have just docs  
3 or nurses. There are other things that go into these  
4 disparities and their measurements that I think we  
5 would be foolish to ignore.

6 COMMISSIONER GAZIANO: Mr. Chairman,  
7 Commissioner Yaki's question sort of suggests how I  
8 can clarify my point. Environmental justice issues  
9 may be interesting, but I would suggest that we not  
10 try to take those particular ones on in this in just a  
11 briefing. Part of what I mean is that I don't think  
12 that our hearing should focus on whether different  
13 types of health care systems, whether the disparity  
14 would exist or not, and we just look at the existing  
15 health care systems we have.

16 Because there's a huge other debate about,  
17 you know, whether we should have universal health  
18 care, socialized medicine or whatever, is whether our  
19 existing health care system is failing and  
20 contributing to disparities. And I think it's very  
21 wise when we're doing that to focus on one major class  
22 of diseases, whether it's health care, diabetes or  
23 something else.

24 The reason I think health care may be good  
25 is because there are some genetic arguments. There

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1 are some socioeconomic arguments, and there are some  
2 arguments about -- and it's the number one killer, and  
3 there are --

4 COMMISSIONER HERIOT: Heart disease. You  
5 kept saying health care.

6 COMMISSIONER HERIOT: I'm sorry.

7 COMMISSIONER HERIOT: You meant heart  
8 disease.

9 COMMISSIONER GAZIANO: Heart disease.  
10 It's the number one killer, I still think, and then  
11 there are some arguments that some treatments and  
12 procedures are not provided in a disparate way.

13 But I will yield to others if there's a  
14 convincing argument why a different disease presents  
15 the better focus for our study.

16 COMMISSIONER TAYLOR: Commissioner Yaki,  
17 it's Commissioner Taylor.

18 I'm not opposed to the direction you're  
19 going in sort of in theory. I do want to keep us  
20 somewhat focused by using a disease set as our  
21 foundation, and then if the issues come up with that  
22 disease set, I'd like to address it, but I think if we  
23 limit it to a disease set, such as hypertension,  
24 diabetes, or heart disease, then I think we can have  
25 the type of report and panels that we could all be

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1 proud of.

2 And the environmental justice issue in my  
3 mind doesn't seem to lend itself to focusing on a  
4 disease set. It forces you into a much broader  
5 discussion which may be useful, but I couldn't fit  
6 that within a disease.

7 COMMISSIONER YAKI: Well, I will tell you  
8 this. As someone who has lived with asthma all my  
9 life, I take this issue very seriously, and when you  
10 look at, one, the number of asthma cases in minority  
11 kids in this country, it's skyrocketing. (a) That's a  
12 big problem.

13 (b) When you look at the treatments that  
14 they receive for that asthma compared to what is  
15 available on the market, there's a gigantic disparity  
16 there as well.

17 I'm just pointing that out, Commissioner  
18 Taylor. It's not to criticize what you want to do,  
19 but there are adult onset diseases, but there are also  
20 childhood chronic diseases that, you know, you might  
21 want to take a look at as well.

22 And separate and apart from this, I do  
23 believe and always have believed that we should have a  
24 briefing on environmental justice since it raises many  
25 of the very issues that we care about in terms of

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1 reverse redlining and other kinds of things that go on  
2 with regard to planning decisions by localities and  
3 how it affects minorities in this country.

4 STAFF DIRECTOR DANNENFELSER: Just a point  
5 of --

6 CHAIRMAN REYNOLDS: Okay. At this point  
7 are we ready to vote?

8 STAFF DIRECTOR DANNENFELSER: Mr.  
9 Chairman, I'd just like to get a point of  
10 clarification on when we talk about a set of diseases  
11 do we intend to include heart disease, hypertension  
12 and diabetes as all fitting in the same set?

13 COMMISSIONER TAYLOR: No, it's one or the  
14 other.

15 STAFF DIRECTOR DANNENFELSER: One of those  
16 three.

17 COMMISSIONER TAYLOR: The concept paper  
18 would limit it to one of those three, and I would ask  
19 the staff working with Kim as we look at possible  
20 panelists and the available literature --

21 STAFF DIRECTOR DANNENFELSER: Although  
22 it's possible that hypertension and heart disease  
23 could be one.

24 COMMISSIONER TAYLOR: Could be one, right.

25 COMMISSIONER HERIOT: Yes, heart disease

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1 and hypertension go together. Diabetes is the  
2 alternative.

3 COMMISSIONER TAYLOR: Correct, correct.  
4 So that the concept paper would give us some  
5 flexibility, but limit it to those either two or three  
6 categories depending on how we define it.

7 CHAIRMAN REYNOLDS: Okay. Mr. Melendez,  
8 how do vote?

9 COMMISSIONER GAZIANO: Could I just --  
10 before, so that we have a proper understanding, second  
11 Commissioner Heriot's suggestion that although the  
12 information from the HHS program will be valuable  
13 informing it, but we won't try to examine -- it's not  
14 a review of their work. It's not --

15 COMMISSIONER TAYLOR: No, not at all.

16 VICE CHAIR THERNSTROM: It's not focusing  
17 on the effectiveness of that program. We're going to  
18 try to do our own finding focusing on discrimination.

19 Thanks.

20 CHAIRMAN REYNOLDS: Okay. Commissioner  
21 Melendez, how do you vote?

22 COMMISSIONER MELENDEZ: Yes.

23 CHAIRMAN REYNOLDS: Commissioner Kirsanow,  
24 are you on the line?

25 COMMISSIONER KIRSANOW: I am. I vote yes.

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1 CHAIRMAN REYNOLDS: How do you vote?

2 COMMISSIONER KIRSANOW: Yes.

3 CHAIRMAN REYNOLDS: Commissioner Taylor.

4 COMMISSIONER TAYLOR: Yes.

5 CHAIRMAN REYNOLDS: Commissioner Gaziano.

6 COMMISSIONER GAZIANO: Yes.

7 CHAIRMAN REYNOLDS: Commissioner Heriot.

8 COMMISSIONER HERIOT: Yes.

9 CHAIRMAN REYNOLDS: Commissioner Yaki.

10 COMMISSIONER YAKI: Yes.

11 CHAIRMAN REYNOLDS: Okay. The vote passed  
12 unanimously.

13 Commissioner Taylor, as for when you would  
14 like this briefing to take place, do you have a date  
15 or a month in mind?

16 COMMISSIONER TAYLOR: I do. I would  
17 recommend June 12th of this year as the date for this  
18 briefing.

19 CHAIRMAN REYNOLDS: Okay. Now, have we  
20 done enough work to know if we can put together all  
21 the facts and identify all of the folks that we would  
22 like to invite? Basically, have we done enough work  
23 at this point to select a date and feel confident that  
24 we can pull it off?

25 COMMISSIONER TAYLOR: I believe we have.

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1 The concept paper lists some more than two dozen  
2 possible names. I think with the narrowing of this,  
3 the focus on a particular disease set, it will be  
4 easier to identify our panelists. It will be very  
5 focused. So I'm confident now we've given ourselves  
6 enough time, given all the work we've already done.

7 I would add in addition if we can vote on  
8 the date that we also attempt, if we can, to have this  
9 held on the Hill, so I would ask the staff, assuming  
10 this vote is in the affirmative, to begin the process  
11 of thinking about who we need to contact to make sure  
12 this hearing or this briefing, rather, is held on the  
13 Hill as opposed to here.

14 CHAIRMAN REYNOLDS: Okay. I second the  
15 motion. Do we need to discuss the date and the place  
16 where the briefing will take place?

17 COMMISSIONER HERIOT: I just have this  
18 comment. I think the idea of having it on Capitol  
19 Hill is a very good idea, such a good idea that if we  
20 can't get it there in June, much more likely to get it  
21 there in August. Not much happens in August.

22 COMMISSIONER YAKI: We're in recess in  
23 August.

24 COMMISSIONER HERIOT: Yes.

25 COMMISSIONER TAYLOR: I don't think we

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1 have a meeting in August.

2 COMMISSIONER HERIOT: Yes, but we could  
3 have a meeting in August. If we had a meeting in  
4 August we could always hold it on Capitol Hill.

5 COMMISSIONER TAYLOR: I tend to agree, and  
6 if we have problems getting on the Hill on that date,  
7 I may come back and ask you all to move it.

8 CHAIRMAN REYNOLDS: Okay. So we're voting  
9 on the date, June 12th, and that we have this briefing  
10 take place on Capitol Hill.

11 Commissioner Melendez, how do you vote?

12 COMMISSIONER MELENDEZ: Yes.

13 CHAIRMAN REYNOLDS: Commissioner Kirsanow.

14 COMMISSIONER KIRSANOW: Yes.

15 CHAIRMAN REYNOLDS: Commissioner Taylor.

16 COMMISSIONER TAYLOR: Yes.

17 CHAIRMAN REYNOLDS: Commissioner Gaziano.

18 COMMISSIONER GAZIANO: Yes.

19 CHAIRMAN REYNOLDS: Commissioner Heriot.

20 COMMISSIONER HERIOT: Yes.

21 CHAIRMAN REYNOLDS: Commissioner Yaki.

22 Commissioner Yaki?

23 COMMISSIONER YAKI: What I was going to  
24 say is that if we did it in July it would be after the  
25 July 4th recess.

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1 CHAIRMAN REYNOLDS: The date that --

2 COMMISSIONER YAKI: I'm just saying to Mr.  
3 Taylor July 10th is after the July 4th recess of  
4 Congress and you're pretty much guaranteed a room  
5 then.

6 COMMISSIONER TAYLOR: The Staff Director  
7 said that we may need to -- I don't know how long our  
8 session would be -- to vote on the statutory report.

9 STAFF DIRECTOR DANNENFELSER: In July.

10 COMMISSIONER TAYLOR: I mean, let's aim  
11 for June and revisit next month.

12 CHAIRMAN REYNOLDS: Okay. With that  
13 information, Commissioner Yaki, how do you vote?

14 COMMISSIONER YAKI: Yes.

15 CHAIRMAN REYNOLDS: Okay. The motion  
16 passes unanimously.

17 Okay. Next up, okay, Mr. Staff Director  
18 would you please provide us with an update on the  
19 status of the briefing reports?

20 **VI. MANAGEMENT AND OPERATIONS**

21 **UPDATE ON STATUS OF BRIEFING REPORTS**

22 STAFF DIRECTOR DANNENFELSER: Yes, Mr.  
23 Chairman. Of course, we have just dealt with two of  
24 them today, No Child Left Behind and the voting  
25 enforcement for the 2008 election.

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1           The covert wiretapping and the War on  
2 Terror report was sent to Commissioners on April 8th,  
3 and --

4           COMMISSIONER YAKI: I'm out of here.

5           STAFF DIRECTOR DANNENFELSER: -- requested  
6 comments on that by May 3rd.

7           CHAIRMAN REYNOLDS: Okay.

8           COMMISSIONER KIRSANOW: Mr. Chair,  
9 Kirsanow also.

10          CHAIRMAN REYNOLDS: Okay. Hold on a  
11 moment. Let me -- okay, all right. We still have a  
12 quorum.

13          COMMISSIONER HERIOT: Can we vote on the  
14 SAC first so that we make sure we keep our quorum?

15          CHAIRMAN REYNOLDS: I'm sorry. What did  
16 you say?

17          COMMISSIONER HERIOT: Can we vote on the  
18 SAC first so that we make sure we keep our quorum?

19          CHAIRMAN REYNOLDS: Okay. That should, I  
20 hope --

21          COMMISSIONER HERIOT: Oh, I'm sorry.  
22 There are other motions that are coming up, too. I  
23 withdraw that. I thought maybe we were just going to  
24 do reports for a while. Sorry.

25          CHAIRMAN REYNOLDS: Okay. Commissioner

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1 Heriot, you're suggesting that we take care of --

2 COMMISSIONER HERIOT: No, I withdraw my  
3 suggestion. I didn't realize that this section has  
4 all of the motions that Commissioner Melendez had  
5 wanted. So never mind. I just wanted to --

6 CHAIRMAN REYNOLDS: So we'll stick with  
7 the original order then, right?

8 COMMISSIONER HERIOT: Yes.

9 CHAIRMAN REYNOLDS: Okay. Mr. Staff  
10 Director, did you finish?

11 STAFF DIRECTOR DANNENFELSER: No. I  
12 mentioned that the covert wiretapping and the War on  
13 Terror report were sent to Commissioners on April 8th.

14 Comments were requested by May 3rd. That is a little  
15 bit shorter comment period than we've normally be  
16 doing by about five days shorter, but there are no  
17 findings and recommendations with that report, and  
18 subsequent changes in policies by the Bush  
19 administration and subsequent legislation that was  
20 passed by Congress seem to have minimized the issues  
21 that would still be in play on that particular issue.

22 So I'm hoping that that May 3rd, if  
23 Commissioners have comments, that they will be able to  
24 submit them by May 3rd.

25 The Title 9 athletics report was sent to

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1 Commissioners on April 9th. I had requested comments  
2 by May 19th on that. That is something that we may  
3 want to talk about the date for that in light of the  
4 fact that we have these other comment periods that we  
5 have discussed today with the two reports that were  
6 just passed. So I would entertain some suggestions on  
7 a possible change to that date for comments.

8 Racial categorization in the 2010 census  
9 is now posted on the Websites. Copies have been sent  
10 to Congress and additional copies are available at  
11 headquarters, and some have been sent to the regional  
12 offices.

13 The Multi-ethnic Placement Act briefing  
14 report, we have final comments from the panelists in  
15 terms of clarifications we were trying to get. The  
16 editorial and legal sufficiency reviews have been  
17 completed, and OCRE has submitted draft findings and  
18 recommendations to the Office of the Staff Director  
19 for review.

20 The illegal immigration report, editorial  
21 and legal sufficiency reviews have been conducted.  
22 The panelists have been consulted and appropriate  
23 edits have been incorporated. I'm currently reviewing  
24 the revised version that incorporates those different  
25 suggestions and will hopefully be able to send that to

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1 Commissioners for review in the near future. Of  
2 course, we'll have to factor that into the overall  
3 schedule of reports since there are a number of them  
4 in play right now.

5 The encouraging minority students to  
6 pursue careers in science, engineering, technology,  
7 mathematics, the stem report, we have final  
8 clarifications from panelists regarding their  
9 statements. The attorney advisory for the Office of  
10 the Staff Director has submitted the draft report to  
11 me for my review, and the attorney advisor and the  
12 OCRE Director are continuing to draft findings and  
13 recommendations. So that report will soon be  
14 available for submission for editorial and legal  
15 sufficiency reviews.

16 The educational effectiveness of  
17 historically black colleges and universities, that  
18 draft had previously been completed along with  
19 findings and recommendations, and there has been a  
20 discussion among Commissioners about considering and  
21 releasing that report jointly with the stem briefing  
22 report.

23 The discrimination against Native  
24 Americans in border towns, OCRE is making final  
25 changes for resubmission of that report to the Staff

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1 Director.

2 The Blaine amendments briefing report,  
3 that draft will be finalized by OGC for submission to  
4 the Staff Director. OGC is currently very engaged on  
5 the statutory report, but will turn back to that one  
6 as soon as time permits.

7 The English in the work place briefing  
8 report, that is one that OGC has followed up with  
9 panelists on the briefing transcripts. We did extend  
10 the comment period on that. It was extended until  
11 April 20th, and we are receiving many comments on that  
12 particular report.

13 And that's my update on the briefing  
14 reports.

15 CHAIRMAN REYNOLDS: Questions?

16 COMMISSIONER GAZIANO: This is  
17 Commissioner Gaziano.

18 Other Commissioners may have specific  
19 requests to either extend the comment period, but  
20 because Vice Chair Thernstrom asked for this review  
21 and she's not here, and in lieu of all the other  
22 motions we have, what I'd like to request is that we  
23 put on our agenda for the May meeting whether the  
24 Commission might want to give further direction to the  
25 staff of whether to prioritize some of these, whether

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1 we're interested in, you know, completing some of  
2 these with findings and recommendations, without  
3 findings and recommendations.

4 As I explained this morning, I think  
5 that's appropriate in some cases, but I'd rather not  
6 take the time up, but I'd like if that's agreeable to  
7 the Chairman and not too disagreeable to other  
8 Commissioners, I'd like the other Commissioners to  
9 then review the reports and come to that meeting with  
10 some ideas of whether we have higher priorities for  
11 some of these pending reports.

12 CHAIRMAN REYNOLDS: I support your  
13 suggestion.

14 STAFF DIRECTOR DANNENFELSER: I would just  
15 ask one question relating to the covert wire tapping,  
16 if that one might be left at May 3rd to keep open the  
17 possibility of it being considered at the May meeting.

18 That would then provide enough time, assuming there  
19 were not terribly in depth comments, that that could  
20 be sent to Commissioners if the Chairman were to  
21 decide to schedule it for the May meeting.

22 CHAIRMAN REYNOLDS: Where is it in the  
23 process? You're still collecting --

24 STAFF DIRECTOR DANNENFELSER: No, no.  
25 Well, the covert wiretapping was sent to Commissioners

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1 on April 8th with requests for comments to be  
2 submitted by May 3rd.

3 CHAIRMAN REYNOLDS: Okay, and to date have  
4 you received any comments?

5 STAFF DIRECTOR DANNENFELSER: No.

6 CHAIRMAN REYNOLDS: Okay. All right.  
7 Well, let's play that by ear. I mean, I think that  
8 under one scenario where we don't have any comments,  
9 that would suggest one course of action. If we  
10 received comments, it would suggest another course of  
11 action or could suggest another course of action.

12 Okay. At this point we are -- oh, okay.  
13 Commissioner Melendez has submitted several motions,  
14 eight altogether, and I have placed four on the agenda  
15 for this meeting.

16 **VI. MANAGEMENT AND OPERATIONS**

17 **FOUR MOTIONS PROPOSED BY COMMISSIONER MELENDEZ**

18 The intention is to deal with the remaining motions at  
19 another hearing -- I'm sorry -- at another meeting.  
20 Some of the motions implicate HR issues, and so I've  
21 asked Marty to be at the ready to walk us through.

22 The first is his motion, and I will  
23 support the motion.

24 COMMISSIONER MELENDEZ: Mr. Chairman.

25 CHAIRMAN REYNOLDS: Well, I'll read it

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1 into the record.

2 COMMISSIONER MELENDEZ: Mr. Chairman.

3 CHAIRMAN REYNOLDS: I move that the Staff  
4 Director --

5 COMMISSIONER TAYLOR: Mr. Chairman.

6 COMMISSIONER MELENDEZ: Mr. Chairman.

7 CHAIRMAN REYNOLDS: Yes.

8 COMMISSIONER MELENDEZ: I don't think my  
9 mic is coming through. I'd like to withdraw my  
10 motions. I think that the motion before that I have,  
11 I wanted the majority of the Commissioners to weigh  
12 into that, and we have lost quite a few, including  
13 Michael Yaki. So I would like to table those to a  
14 more opportune time, at least the motions that I've  
15 set forth today if that's possible.

16 CHAIRMAN REYNOLDS: Understood. I second  
17 the motion. Discussion.

18 (No response.)

19 CHAIRMAN REYNOLDS: Okay. Commissioner  
20 Melendez, how do you vote?

21 COMMISSIONER MELENDEZ: Aye, yes.

22 COMMISSIONER GAZIANO: Are we voting on  
23 removing or not --

24 COMMISSIONER HERIOT: Motion to table.

25 COMMISSIONER GAZIANO: Oh, motion to

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1 table.

2 CHAIRMAN REYNOLDS: The motion is to table  
3 discussion of the four motions proposed by  
4 Commissioner Melendez.

5 Commissioner Taylor.

6 COMMISSIONER TAYLOR: Aye.

7 CHAIRMAN REYNOLDS: Commissioner Gaziano.

8 COMMISSIONER GAZIANO: Aye, but I'll let  
9 Commissioner Melendez know that it's on his request.  
10 I think I would have supported a couple of them.

11 CHAIRMAN REYNOLDS: Well, and you'll have  
12 an opportunity to support them in the future.

13 COMMISSIONER GAZIANO: Yes. I just wanted  
14 to let him know that.

15 CHAIRMAN REYNOLDS: Okay. Commissioner  
16 Heriot.

17 COMMISSIONER HERIOT: Yes.

18 CHAIRMAN REYNOLDS: Okay. The motion  
19 passes unanimously.

20 Next up is State Advisory Committee  
21 issues.

## 22 VII. STATE ADVISORY COMMITTEE ISSUES

### 23 TENNESSEE SAC

24 CHAIRMAN REYNOLDS: We have the Tennessee  
25 SAC that's ready for rechartering. Nine of the 11

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1 previously appointed members were eligible for  
2 reappointment. Two of these nine declined  
3 reappointment. The remaining seven previously  
4 appointed members are being recommended for  
5 reappointment.

6 Recommended Advisory Committee members  
7 were selected in compliance with the State Advisory  
8 Committee membership selection guidelines following  
9 the Lean Six Sigma project approved by Commissioners  
10 in January of 2008. Commission staff reached out to a  
11 wide variety of organizations and individuals. The  
12 Staff Director details his outreach in the April 10th  
13 memo to Commissioners.

14 I move that the Commission recharter the  
15 Tennessee State Advisory Committee. In this motion  
16 the committee appoints the following individuals to  
17 that committee:

18 Reverend Bernie Miller

19 Tiffany Cox

20 Amber Gooding

21 Gregory Grisham

22 Brian Fitzpatrick

23 John Harris

24 Nika Jackson

25 Jason Johnson

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1 Vicki Lott

2 Carol Swain

3 And Mr. Trevino

4 Furthermore, the Commission appoints  
5 Reverend Miller to serve as chair of the rechartered  
6 Tennessee State Advisory Committee. These members  
7 will serve as uncompensated government employees.  
8 Under this motion the Commission authorizes the Staff  
9 Director to execute the appropriate paper work for the  
10 appointment.

11 Is there a second?

12 COMMISSIONER HERIOT: Second.

13 CHAIRMAN REYNOLDS: Discussion.

14 COMMISSIONER GAZIANO: We had a second.

15 CHAIRMAN REYNOLDS: I'm sorry?

16 COMMISSIONER GAZIANO: Gail seconded.

17 CHAIRMAN REYNOLDS: Okay. Bear with me.

18 I had a list of Commissioners who were still on the  
19 phone, which I have promptly misplaced.

20 COMMISSIONER HERIOT: Call the question.

21 CHAIRMAN REYNOLDS: In any event, here we  
22 go. Commissioner Melendez, how do you vote?

23 COMMISSIONER MELENDEZ: Abstain.

24 CHAIRMAN REYNOLDS: Commissioner Taylor.

25 COMMISSIONER TAYLOR: Aye.

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1 CHAIRMAN REYNOLDS: Commissioner Gaziano.

2 COMMISSIONER GAZIANO: Yes.

3 CHAIRMAN REYNOLDS: Commissioner Heriot.

4 COMMISSIONER HERIOT: Yes.

5 CHAIRMAN REYNOLDS: Okay. We have one  
6 abstention. The remaining Commissioners voted in  
7 favor of the motion. The motion passes.

8 And we have covered all of our agenda  
9 items with the exception of the ones that we have  
10 tabled.

11 **VIII. Adjournment**

12 Folks, thank you very much and we'll meet  
13 again next month.

14 (Whereupon, at 1:17 p.m., the meeting was  
15 concluded.)

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